JOINT APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 14,904

NATIONAL WOODWORKERS' ASSOCIATION, ET AL., - - - - - - Petitioners,

versus

NATIONAL LABOR RELATIONS BOARD, - Respondent.

No. 14,988

NATIONAL LABOR RELATIONS BOARD, - Petitioner,

versus

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, - - - - - - - - Respondent.

ON PETITION TO REVIEW AND CROSS-PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

WESTERFIELD-BOOTE CO., INCORPORATED, LOUISVILLE, KY. 2-6-62-100

INDEX

	PAGE
Chronological Summary of Proceedings Below and in this Court	1
Decision and Order of N.L.R.B.	2
Trial Examiner's Decision	5
Statement of Case	5
Findings of Fact	6
I. The Employers involved and their business	6
II. The Respondents	8
III. The unfair labor practices	9
A. Introduction; the issues	9
B. Rule 17 of the contract	9
C. Conduct involved at four specific jobsites	11
D. The Affiliated Locals	16
E. The contentions of the parties	18
F. Concluding findings	22
IV. The effect of the unfair labor practices upon commerce	31
V. The remedy	31
Conclusions of Law	32
Recommended Order	33
Petition to Review and Modify Order of N.L.R.B.	37
Jurisdiction	38
Nature of the Proceedings	39
Statement of Points	42
Prayer	49
Testimony	51

TESTIMONY ON BEHALF OF GENERAL COUNSEL:

Witnesses	Direct	Cross	Redirect	Recross
L. Charles Scipione	52	56		
Phillip J. Diamond	57	58		
Walton H. Nason, Jr.	60	64		
Daniel C. McDonnell	67	72	75	
Edward C. Driscoll	78	82	84	
John F. Brown	85			
James Lauderdale	88			
Robert H. Gray	89			
Morris Green	91	97	100	
Harry R. Thompson	100	101	102	
Richard J. Swope	102			
Charles Lo Pinto	104	105		

TESTIMONY ON BEHALF OF RESPONDENT:

Witness	Direct	Cross	Redirect	Recross
Robert H. Gray	106	110	113	113

EXHIBITS:

	For Identification	In Evidence
General Counsel's 3	53	
General Counsel's 8	68	
General Counsel's 10	68	
General Counsel's 14	95	
General Counsel's 17	93	

	PAGE
General Counsel's Exhibit No. 1-G (Answer To Complaint)	116
General Counsel's Exhibit No. 2	116
General Counsel's Exhibit No. 3	117
General Counsel's Exhibit No. 4	117
General Counsel's Exhibit No. 7-A	119

PAGE

General Counsel's Exhibit No. 9 120
General Counsel's Exhibit No. 13-A 121
General Counsel's Exhibit No. 14 122
Respondent's Exhibit No. 6 123
The Statutory Provisions 124
Excerpts From Legislative History Of The Labor Management Relations Act, 1947 125

Proceedings in the United States Court of Appeals for the Seventh Circuit 142
Supplemental Appendix to the brief for the National Labor Relations Board 142
Excerpts from transcript of proceedings before the NLRB 142
Testimony of Robert H. Gray—
direct 143
Supplemental Appendix to the brief for Robert H. Gray, et al. 147
Excerpts from transcript of proceedings before the NLRB 147
Testimony of Philip J. Diamond—
cross 148
Walton H. Nason, Jr.—
cross 149
Daniel C. McDonnell—
cross 150
Edward C. Driscoll—
cross 151
Robert H. Gray—
direct 153
Excerpt from transcript of proceedings before the NLRB 155
Testimony of Robert H. Gray 155
Opinion, Schnackenberg, J. 156
Decree 167
Appendix A—Notice 172
Appendix B—Notice 173
Order denying petitions for rehearing 175
Clerk's certificate (omitted in printing) 176
Orders allowing certiorari 177

CHRONOLOGICAL SUMMARY OF PROCEEDINGS BELOW AND ACTION TAKEN IN THIS COURT

On June 13, 1963, the National Woodwork Manufacturers Association, a non-profit corporation for itself and on behalf of its members ("NWMA"), and Mr. Charles B. Mahin, an individual, filed charges with the Pennsylvania Regional Office of the National Labor Relations Board ("Board") against the Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its affiliated local unions and certain officers and agents (hereinafter collectively referred to as "Council," unless otherwise specifically mentioned), alleging violations of Section 8(b)(4)(A), 8(b)-(4)(B), and 8(e) of the Labor Management Relations Act, as amended. On August 27, 1963, the Board issued a consolidated complaint based on the above charges in two cases designated as Cases No. 4-CE-9 and No. 4-CC-258 and scheduled the case for hearing. On September 9, 1963, the Council filed its answer to the complaint. On October 2, 1963, the hearing was rescheduled by Board order. On October 4, 1963, the Board issued an amended consolidated complaint and a notice rescheduling the hearing. The hearing was held on October 16, 17 and 18, 1963 in Philadelphia, Pennsylvania before Trial Examiner Louis Libbin.

The Trial Examiner's Decision was filed on February 7, 1964. The Council filed exceptions to that Decision on March 10, 1964 and Petitioners filed exceptions on March 16, 1964. The General Counsel also filed exceptions on March 16, 1964.

The Board issued its Decision and Order on November 12, 1964. An order correcting a typographical error in the Decision and Order was issued on December 14, 1964.

On November 30, 1964, Petitioners filed its Petition for Review with this court. The Board filed the certified record and its answer on January 8, 1965.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and its affiliated Local Unions, and Charles B. Mahin, An Individual.	Case No. 4-CE-9
Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and its Affiliated Local Unions, and Said Council's Officer, Robert H. Gray, Secretary-Treasurer, and Representatives Charles L. Boyer, Edward Kane and Edward Goldstein, and Charles B. Mahin, An Individual and National Woodwork Manufacturers Association.	Case No. 4-CC-258

DECISION AND ORDER

On February 7, 1964, Trial Examiner Louis Libbin issued his Decision in the above-entitled proceeding, finding that Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and

desist therefrom and take certain affirmative action, as set forth in the Decision attached hereto. He also found that Respondents had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of these allegations. Thereafter, the General Counsel, the Charging Party, and the Respondents filed exceptions to the Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.[1]

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in the case, including the Decision, the exceptions, and the briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner and orders that Respondents, Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and its affiliated Local Unions, their officers, agents, and representatives, including Robert H. Gray and Charles L. Boyer, shall take the action set forth in the Trial Examiner's recommended Order.

Dated, Washington, D. C. November 12, 1964.

John H. Fanning, Member

Howard Jenkins, Jr., Member

(Seal) National Labor Relations Board

[1] Charging Parties' request for oral argument is hereby denied as the record, the exceptions, and brief adequately present the issues and positions of the parties.

Member Brown, dissenting in part:

I dissent from the majority opinion to the extent that it finds a violation of Section 8(b)(4)(B) of the Act.

As found by the Trial Examiner and my colleagues, Respondent District Council and general contractors Nason, McDonnell, and Driscoll were parties to contracts containing the same lawful work protection clause designed to protect and preserve certain cutting and fitting work on doors which the jobsite carpenters covered thereby normally performed. In the face of this contractual provision, the general contractors subcontracted the millwork on doors thereby depriving the jobsite carpenters of this cutting and fitting work. Respondents invoked the "will not handle" clause and refused to hang these precut and prefit doors. It is found by the Trial Examiner and my colleagues that this action was not aimed at the precut, prefit millwork, but was solely directed at the loss of the cutting and fitting work which would otherwise be performed by the jobsite carpenters. Yet, the majority opinion is holding that Respondents thereby violated Section 8(b)(4)(B) of the Act.

That conclusion is thought by my colleagues to follow from their subsidiary finding that Nason, McDonnell, and Driscoll were powerless to control the assignment of the cutting and fitting work. But, as I have heretofore pointed out,[1] this is faulty reasoning for it makes the incidental factor of the extent to which an employer could satisfy a union's demands the determinative factor in ascertaining a union's objective in a given case. I believe that all the circumstances including, of course, the factor of control, need to be considered in determining a union's objective in these cases, and the total picture in the instant matter, as has already been shown, is that of action taken pursuant to

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[1] See my dissenting opinion in Ohio Valley Carpenters District Counsel, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Cardinal Industries, Inc.) 144 NLRB No. 16.

a lawful contract[3] to protect the job opportunities of employees covered by the contract.[4] Such activity is certainly not proscribed by Section 8(b)(4)(B).

Dated, Washington, D. C. November 12, 1964.

Gerald A. Brown, Member
National Labor Relations Board

TRIAL EXAMINER'S DECISION

Statement of the Case

Upon separate charges filed on June 13, 1963, by Charles B. Mahin, an individual, and by Charles B. Mahin and National Woodwork Manufacturers Association, the General Counsel of the National Labor Relations Board, by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued his amended consolidated complaint, dated October 4, 1963, against the Metropolitan District Counsel of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called District Council, against the District Council's affiliated Local Unions, herein called the Affiliated Locals and against the District Council's Secretary-Treasurer Robert H. Gray and Representatives Charles L. Boyer, Edward Kane, and Edward Goldstein. With respect to the unfair labor practices, said complaint alleges, in substance that Respondents District Council and the Local Unions

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[3] In the words of the Trial Examiner, the pertinent contractual provision "is not concerned with the nature of the employer with whom the contractor does business nor with the employment conditions of other employers or employees, nor does it attempt to control such other employers or employees. The provision guards against encroachments on the cutting out and fitting work of the contract unit employees who have performed that work in the past. Its purpose is plainly to regulate the relations between the general contractor and his own employees and to protect a legitimate economic interest of the employees by preserving their unit work." See Service and Maintenance Employees' Union (United Artists Theatre Circuit, Inc), 148 NLRB No. 99.

[4] This is as true of the action taken against Nason, McDonnell, and Driscoll as it is of the identical action taken with respect to Frouge, which my colleagues are finding was lawful solely because Frouge had control over the assignment of work in dispute.

have entered into, maintained, implemented, and enforced collective-bargaining agreements with certain named employers in violation of Section 8(e) of the Act, and that all Respondents have engaged in conduct violative of Section 8(b)(4)(i)(ii)(A) and (B) and Section 2(6) and (7) of the Act. In its duly filed answer, Respondents denied the unfair labor practice allegations.

Pursuant to due notice, a hearing was held before me in Philadelphia, Pennsylvania, on October 16-18, 1963. All parties were represented, participated in the hearing, and were given full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs. Respondents' motion to dismiss all allegations in the complaint, made at the close of the hearing and upon which I reserved ruling, is hereby granted in part and denied in part, in accordance with the findings and conclusions hereinafter made. On December 9, 1963, all parties filed briefs, which I have fully considered.

Upon the entire record[1] in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Employers involved and their business

General Building Contractors Association, Inc., herein called GBCA, a Pennsylvania nonprofit corporation with its office and principal place of business in Philadelphia, has at all times material herein engaged in joint group collective bargaining for its employer members who are engaged in the building and construction of schools, hospitals, factories and other structures in the Philadelphia, Pennsylvania, area.

John J. McDonnell, Inc., herein called McDonnell, a Pennsylvania corporation and a member of GBCA, is engaged in the business of a general contractor with its principal place of business in Upper Darby, Pennsylvania.

[1] Obvious errors in the typewritten transcript of testimony are noted and corrected in Appendix A, attached hereto.

In 1963 McDonnell had been general contractor for the construction of the North Junior High School in West Chester, Pennsylvania. The parties stipulated that, if called, witnesses would testify that McDonnell purchased and received on this job materials from outside the Commonwealth of Pennsylvania, valued in excess of $50,000.

Nason and Cullen, Inc., herein called Nason, a Pennsylvania corporation and a member of GBCA, is engaged in the business of a general contractor with its principal place of business in Philadelphia, Pennsylvania. In 1963 Nason has been the general contractor for the construction of the St. Aloysius Academy for Boys at Bryn Mawr, Pennsylvania. The parties stipulated that, if called, witnesses would testify that Nason purchased and received on this job materials from outside the Commonwealth of Pennsylvania, valued in excess of $50,000.

L. F. Driscoll Company, herein called Driscoll, is a Pennsylvania corporation engaged in the business of a general contractor with its principal place of business in Philadelphia, Pennsylvania. In 1963 Driscoll has been the general contractor on a job for the Coatesville Hospital in Coatesville, Pennsylvania. The parties stipuluated that, if called, witnesses would testify that Driscoll purchased and received on this job materials from outside the State of Pennsylvania, valued in excess of $50,000.

Frouge Corporation, herein called Frouge, is a Delaware corporation engaged in the business of a general contractor with its main office in Bridgeport, Connecticut. In 1963 Frouge has been the general contractor for the construction of the Capehart Housing Project in Philadelphia, Pennsylvania. The parties stipulated that, if called, witnesses would testify that Frouge purchased and received on this job materials from outside the State of Pennsylvania, valued in excess of $50,000.

Hardwood Products Corporation, herein called Hardwood, is a Wisconsin corporation engaged in the manufacture of doors and related products with its principal

place of business in Neenah, Wisconsin. Oxford Plastic Products Co., herein called Oxford, is a Pennsylvania corporation engaged in the manufacture of doors and related products with its principal place of business in Oxford, Pennsylvania. Mohawk Flush Doors, Inc., herein called Mohawk, is an Indiana Corporation engaged in the manufacture of doors and related products with its principal place of business in Sunbury, Pennsylvania. The parties stipulated that, if called, witnesses would testify that in 1962 Hardwood shipped products valued in excess of $2,000,000 to parties outside the State of Wisconsin, that during the 12 months preceding the instant hearing Oxford shipped products valued in excess of $70,000 to parties outside the Commonwealth of Pennsylvania, and that during 1962 Mohawk shipped goods valued at $100,000 to parties outside the Commonwealth of Pennsylvania.

Upon the above undisputed facts, I find that McDonnell, Nason, Driscoll, Frouge, Hardwood, Oxford, and Mohawk are engaged in commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) of the Act.

II. The Respondents

Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called District Council, is admitted to be, as I find, a labor organization within the meaning of Section 2(5) of the Act.

The complaint also alleges, and the answer denies, that the District Council's affiliated Local Unions, herein called the Affiliated Locals are also labor organizations within the meaning of Section 2(5) of the Act. For the reasons hereinafter set forth, I find that the Affiliated Locals are labor organizations within the meaning of the Act.

The complaint alleges, and the answer admits, that at all times material herein Robert H. Gray has been Secretary-treasurer and an officer and agent of the District Council, and that Charles L. Boyer, Edward Kane and Edward

Goldstein have each been representatives and agents of District Council. I find that, at all times material herein, Gray, Boyer, Kane, and Goldstein have been agents of the District Council within the meaning of Sections 2(13) and 8(b) of the Act.

III. The unfair labor practices

A. Introduction; the issues

The relevant facts are not in dispute. A "blank" or "blind" door is one which has not been cut for the hardware or fitted for the hinges. Before such a "blank" door can be hung, it would have to be mortised for the knob, routed for the hinges, and bevelled to make it fit between the jambs. A prefit or precut or premachined door is one on which this work of fitting for the hardware and cutting for installation has already been performed prior to the arrival of the door on the jobsite. The carpenters employed on the jobsite by contractors operating under union contracts, acting upon instructions from the District Council and its agents, refused to hang prefit or precut or premachined doors because of the claim that to do so would violate a working rule known as Rule 17.

The issues litigated in this proceeding are (1) whether Rule 17 in a current collective-bargaining agreement is violative of Section 8(e) of the Act, (2) whether the conduct of the District Council and its agents in connection with the refusal of carpenters to work on prelt or precut or premachined doors at four specified jobsites was violative of Section 8(b)(4)(i) and (ii)(A) and (B) of the Act, and (3) whether the Affiliated Locals are labor organizations within the meaning of Section 2(5) of the Act.

B. Rule 17 of the contract

As previously noted, the General Building Contractors Association, herein called GBCA, engages in joint group

collective bargaining for and on behalf of its employer members; Nason & Cullen, Inc., herein called Nason, and John J. McDonnell, Inc., herein called McDonnell, are Philadelphia area general contractors who are members of GBCA and who employ carpenters. On May 1, 1960, GBCA and the District Council executed a collective-bargaining agreement which was renewed or extended, with modifications not here material, on or about May 1, 1963, for a period of 2 years. L. F. Driscoll Company, herein called Driscoll, is also a Philadelphia area general contractor who employs carpenters but is not a member of GBCA. In September 1, 1961, Driscoll and the District Council executed a collective-bargaining agreement which was renewed or extended, with modifications not here material, on or about May 1, 1963, for a period of 2 years. All the foregoing contracts contain Rule 17 which reads as follows:

> Rule 17. No employee shall work on any job on which cabinet work, fixtures, mill work, sash doors, trim or other detailed millwork is used unless the same is Union-made and bears the Union Label of the United Brotherhood of Carpenters and Joiners of America. No member of this District Council will handle material coming from a mill where cutting out and fitting has been done for butts, locks, letter plates, or hardware of any description, nor any doors or transoms which have been fitted prior to being furnished on job, including base, chair, rail, picture moulding, which has been previously fitted. This section to exempt partition work furnished in sections.

Frouge Corporation, herein called Frouge, is a general contractor located in Bridgeport, Connecticut. Frouge employs carpenters and has a collective-bargaining contract with the Carpenters' International Union. Under the terms of this agreement, Frouge is to abide by all the local rules and regulations of the area in which it worked.

C. Conduct involved at four specific jobsites[2]

1. The Nason-Cullen incident on the St. Aloysius Academy job

After submitting bids based on plans and specifications, Nason received the contract on May 23, 1962, from the Sisters, Servants of the Immaculate Heart of Mary for the construction of a new school building for St. Aloysius Academy for Boys in Bryn Mawr, Pennsylvania. The specifications provided, among other things, that certain doors be formica covered "Ambas-A-Doors," as manufactured by Oxford Plastic Products Co., of Oxford, Pennsylvania, and that they be prefit, precut and ready to hang upon arrival on the job. Nason subcontracted all the mill work for this job, including the doors, to T. W. Hammonds & Bro., which, in turn, procured the doors from the Oxford Plastics Co., herein called Oxford.

These doors, about 170 in number and bearing a union label, were delivered to the St Aloysius jobsite in the latter part of May and first part of June 1963. After some of the doors had been delivered to the jobsite in May, Charles Boyer, the representative of the District Council, approached Walter Nason, Jr., vice president of Nason; remarked that he understood they had prefit doors on the job; and stated that the carpenters on the jobsite would not hang them because they were prefit doors. Nason replied that he would like to discuss it at a future date. At that time Nason was not quite ready for the work of hanging doors but soon would be.

Thereafter, but sometime prior to the middle of June, Nason asked Job Steward Coleson to hang the doors. Coleson replied that as of that time he had been directed not to hang them and therefore could not ask the men to hang them. At Nason's request, Coleson agreed to call Boyer to find out what further decision had been made about the

[2] The findings in this section are based on admissions and exhibits and credited testimony which was admitted or undisputed.

doors. The next day, Coleson reported to Nason that Boyer had reiterated the position that the carpenters would refuse to hang the doors and that Boyer had directed him (Coleson) not to hang the doors.

Thereafter, about the middle of June, when Nason was ready to hang the doors, Nason telephoned to Boyer and inquired if a decision had been made about the doors. Boyer replied that the carpenters would not hang the doors because of Rule 17 in the agreement between the District Council and GBCA. Boyer read or summarized over the telephone the second sentence of Rule 17 dealing with prefitting, and then stated that his objection was that the hanging of the doors would be in violation of the contract between the Carpenters Union and GBCA because they were prefit doors.

Respondent's answer admits that the District Council and Boyer "did direct Nason's employees not to install precut and prefitted doors."

2. The McDonnell incident on the North Junior High School job

After submitting bids based on plans and specifications, McDonnell entered into a contract on May 10, 1962, with the West Chester Area Joint School Authority for the construction of the North Junior High School in West Chester, Pennsylvania. The specifications provided, among other things, that certain doors, about 235 in number, be prefit and prefinished. McDonnell subcontracted the millwork for this job, including the doors, to John A. Yohn Co., which, in turn, procured the doors from the Hardwood Products Corporation of Neenah, Wisconsin.

About May 13, 1963, the doors, bearing the label of the United Brotherhood of Carpenters and Joiners of America, began to arrive on the jobsite. On May 23, after about 15 doors had been hung, Boyer telephoned to Daniel McDonnell, treasurer of McDonnell; advised that the jobsite carpenters would not be permitted to handle the doors

because they were in violation of Rule 17; and stated that he was telling the jobsite carpenters that afternoon not to hang the doors. In response to McDonnell's query as to what could be done about it, Boyer suggested that McDonnell get in touch with Gray, the treasurer and business manager of the District Council.

McDonnell immediately telephoned to Gray and related Boyer's conversation. Gray replied that Boyer's position was correct and that the carpenters on the job would no longer hang the precut doors as it was in violation of Rule 17 to use such doors. In reply to McDonnell's query as to what they could do under the circumstances, Gray suggested that one of McDonnell's carpenters on the jobsite be timed on a "blank" or "blind" door to determine how long it would take to cut, fit and hang such a door.[2] Gray added that the carpenters would then hang the precut, prefitted doors supplied by Hardwood if McDonnell would pay them for the amount of time it would have taken them to hang the doors if they had been "blank." McDonnell noted that that would involve additional money for his company and that they were operating on a fixed-price contract. Gray replied that he did not care whether the additional money was paid by the contractor, the achitect or the owner. McDonnell did not agree to accept Gray's suggestion.

Respondents' answer admits that the District Council, Boyer and Gray "directed McDonnell's carpenter employees not to install precut and prefitted doors."

3. The Driscoll incident on the Coatesville Hospital job

Pursuant to bids based on plans and specifications, Driscoll entered into a contract on June 28, 1962, with the Coatesville Hospital of Coatesville, Pennsylvania, for alterations and additions to the Coatesville Hospital. The specifications specified the type of doors to be used and provided

[2] Before the "blank" door could be hung, it would have to be mortised for the knob, routed for the hinges, and bevelled to make it fit between the jambs.

that they be prefitted and prefinished. Driscoll subcontracted the millwork, including the doors, to Boyertown Planing Mill Co., which, in turn, procured the doors from Hardwood Products Corporation of Neenah, Wisconsin.

The doors, about 170 in number and bearing the label of the United Brotherhood of Carpenters and Joiners of America, began to arrive on the jobsite on May 22, 1963. The next day Boyer telephoned to John Brown, Driscoll's vice president; informed him that Driscoll had prefit, prefinished doors on the Coatesville project; and stated that the jobsite carpenters would not be allowed to hang them because it would be in violation of the agreement. In response to Brown's query as to what would happen if "we hang the doors anyhow," Boyer replied that "then the job will be struck."

At Boyer's suggestion, Brown telephoned to Gray and stated that the carpenters refused to hang the doors. Gray replied that no carpenters from now on would hang prefinished or prefit doors.

Upon being advised of Brown's conversations with the union officials, Edward Driscoll, secretary of Driscoll, telephoned to Gray and asked why the carpenters were not allowed to hang the doors. Gray replied that the doors were not being hung because the Company was in violation of Rule 17 in that the doors had been factory precut for size and hardware. Later that afternoon or the next morning, Driscoll again telephoned to Gray and asked what Gray suggested should be done with the doors which had already been delivered on the jobsite. Gray replied that Driscoll could either send the doors back or, as he had suggested to McDonnell, could have them hung by paying the carpenters for the amount of time it would have taken them to perform the work of cutting out and fitting the doors on the jobsite. In a subsequent telephone conversation, Driscoll agreed to the latter suggestion. Arrangements were then made to have one of Driscoll's carpenters cut, fit, and hang a "blank"

door to determine the amount of time that this operation consumed. It was determined that it took the jobsite carpenter 1 hour to perform the cutting and fitting operations which had been performed by Hardwood. Thereafter, in accordance with this agreement, all the doors supplied by Hardwood were hung by Driscoll's carpenters. The work of hanging the doors had been delayed only a few days.

4. The Frouge incident on the Naval Capehart Housing Project

Frouge Corporation entered into a contract with the United States Navy under which Frouge became the general contractor for the construction of the Capehart Housing project in Philadelphia, Pennsylvania. Work on this job began in July 1962. The Government's specifications for this job with reference to the type of doors required set forth the standards to be followed. However, neither the specifications nor Frouge's contract with the Navy required the doors to be precut or prefitted or premachined. The job called for 3,600 doors. On January 18, 1963, Frouge contracted for the purchase of these doors with Baldwin Lumber Company, Inc., which in turn, procured the doors from the Mohawk Flush Doors, Inc., of Sunbury, Pennsylvania. Although Project Manager Green admitted that under the specifications, "blank" or "blind" doors could have been ordered so long as they conformed to United States standards, Frouge nevertheless specified that the doors be premachined for butts and locks because of a belief that such doors would speed up matters on such a large project.

About May 20, 1963, after the second shipment of premachined doors had been received on the jobsite, Edward Kane and Edward Goldstein, representatives of the District Council, talked to Project Manager Green and President Frouge on the jobsite. Kane or Goldstein brought up the subject of the doors and stated that, according to their bylaws, the contractor was not permitted to have these

premachined doors on the job and that their men [the carpenters employed by Frouge] were not allowed to work on them according to the bylaws. Frouge and Green were shown the bylaws and were read Rule 17.[4] Kane related the arrangement which had been made with Driscoll for hanging the prefit or precut doors by paying the carpenters for the time it would have taken them to do the fitting and cutting on the jobsite. However, Frouge decided to use "blank" doors which could be fitted and cut by his carpenters on the jobsite. At that time there were already about 665 premachined doors on the job. As these had already been varnished, Green had them shipped to Frouge in Bridgeport, Connecticut. Frouge then changed the order to "blank" doors and the 3,600 doors which ultimately came to the jobsite were also produced by Mohawk Flush Doors, Inc. All the fitting and cutting out was then done by Frouge's carpenters on the jobsite. It took a carpenter about 8 minutes on one door to do the routing, mortising, and bevelling necessary to get it ready for hanging. None of the 3,600 doors, on which the jobsite carpenters worked bore a union label.

D. The Affiliated Locals[5]

The contract between the GBCA and the District Council states in the "Articles of Agreement" that it is made with the District Council, "acting for and on behalf of itself and of all of the Local Unions of the United Brotherhood of Carpenters and Joiners of America, located and having jurisdiction in the counties of Philadelphia, Delaware, Montgomery, Chester and Bucks, in the Commonwealth of Pennsylvania . . . and of their present and future members . . ."

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[4] Rule 17 in the bylaws is the same as Rule 17 in the GBCA and Driscoll contracts, but has the following added to the last sentence: "and is not applicable to metal doors, transoms, or to any of the above-mentioned items that bear the label of the Brotherhood."

[5] The findings in this section are based on Respondents' contracts and the testimony of Robert Gray, secretary-treasurer of the District Council.

There are 27 Locals in the 5 county area, to which the contract refers, which are affiliated with the District Council. Each carpenter belongs to a Local. Each Local has its own officers, elected by its members. Delegates from the 27 Locals, elected by the membership of each Local, comprise the District Council, which meets twice a month. Only 4 of the Locals,[6] known as specialty Locals whose members do not perform carpentry work on construction jobs in the five county area, are permitted by the District Council to have their own business agents. The remaining 23 Locals are serviced by 11 business agents who work directly under Robert Gray, the secretary-treasurer and business manager of the District Council, and whose functions are to police the jobs and to see that the contracts are adhered to.

Before the District Council had been chartered, each Local had a separate charter and was autonomus. When the Locals increased greatly in number, a charter for the District Council was issued and all the Locals affiliated with the District Council. The District Council then took over the functions, which it has continued to carry on, of negotiating contracts, processing grievances, and administering the contracts which cover the individual members of the several Locals. Each Local no longer has any autonomy except to have its own officers and to elect delegates to the District Council. The members of each Local meet in local union halls to pay their dues and to discuss job problems[7] for their delegate to report at meetings of the District Council for action by the District Council. Each Local files an LMI report with the Bureau of Labor Management Reports of the Department of Labor, as required of all

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[6]These are (1) a Resiliant Floor Local, whose members work only on tile on resiliant floors, (2) a Wharf and Dock Builders Local, whose members are engaged in the policing and driving of piles on the waterfront, (3) a Custom Furniture and Drapery Workers Local, whose members put up venitian blinds and drapes, and (4) a Millwright Local, whose members do nothing but millwright work.

[7]The carpenters on any one specific job may be members of different Locals.

labor organizations by Section 201 of the Labor-Management Reporting and Disclosure Act of 1959, as amended on June 30, 1960.

E. The contentions of the parties

1. The General Counsel's contentions

The General Counsel contends that Rule 17 in its entirety violates Section 8(e); that the first sentence clearly violates Section 8(e); and that the second sentence, even if viewed separately, is also unlawful. He argues that Rule 17 prescribes only what the employees will not do, that it anticipates work to be performed by persons other than the employees of the immediate employer and thereby consents in advance to a boycott of the materials which the union will not handle, and that it reaches outside the job and touches others that have no contractual relationship with the District Council. He also contends that the proviso to Section 8(e) is not applicable because he claims that the rule does not refer to work to be performed at the jobsite.

With respect to the 8(b)(4) allegations, the General Counsel contends that the primary employers are the door manufactures, that the secondary employers are the four general contractors, and that Respondents' refusal to hang the prefit, precut, or premachined doors consitutes an unlawful product boycott. He points out that a product boycott has a prohibited object of forcing any employer to cease using the products of another employer and is therefore unlawful even if Respondents had no dispute with the door manufacturers or evidenced no direct intent to have the general contractors cease doing business with the door manufacturers. In addition, the General Counsel contends, three of the general contractors had no control over the assignment of the cutting out and fitting work to the jobsite carpenters on the jobs in question because the specifications required the use of precut or prefit doors, and therefore could not have granted Respondents' requests without ceasing to do business with the mill suppliers. It

is clear therefore, the General Counsel further argues, that Respondents were not protecting work which the contractors did not have to give them but that Respondents' prime target was the precut or prefit doors and all those who used them.

He also contends that the Affiliated Locals are labor organizations within the meaning of Section 2(5) of the Act and are proper Respondents in this case.

2. The Charging Party's contentions

The contentions of the Charging Party are, in substance, similar to those of the General Counsel. With respect to Rule 17, he contends that the controlling factor is not its form but its effect. Thus, he argues that the force and effect of Rule 17 is to require the contracting employer to stop handling the product of another employer or to cease doing business with another employer, and therefore Respondents' lawful objective of preserving work for the jobsite carpenters cannot save the rule from being violative of Section 8(e).

With respect to the 8(b)(4)(B) allegations, the Charging Party disagrees with the General Counsel on the significance to be accorded to the factor of work control. He takes the position that the factor of local work control should not be accorded any significance in a product boycott situation such, as he claims, is present in this case, contending that such a boycott is unlawful whether or not there is control over the assignment of the work in question.

3. The Respondents' contentions

While contending that the first sentence of Rule 17 has not been enforced for many years, Respondents concede that the first sentence is proscribed by Section 8(e) and that by renewing and extending the contracts Respondents "entered into" a contract violative of Section 8(e) to that extent. However, Respondents further contend that the second sentence of Rule 17 is not unlawful. Disagreeing

with the General Counsel's assertion that Rule 17 cannot be divided into sentences but must be treated as a whole, Respondents emphasize that the second sentence is entirely separate from, and wholly unrelated to, the first sentence, that they deal with different subjects, that they impose separate and distinct duties, and that they provide for different remedies for their breach.[5]

With respect to the second sentence of Rule 17, Respondents argue that it constitutes a layman's effort to preserve for construction site carpenters the cutting and fitting of millwork, work which, it is argued, has been traditionally assigned to and performed by them. Respondents arrive at this interpretation by the following reasoning: The sentence states that the carpenters will not "handle material" arriving on a jobsite if such material has been cut out and fitted prior to being brought onto the jobsite. The result of this provision is that when millwork which is not precut or prefit arrives on the job, the work of cutting and fitting the millwork will necessarily be done by the jobsite carpenters. Thus, by stating what the jobsite carpenters will not do, the second sentence of Rule 17 clearly assigns to these carpenters the tasks of cutting out and fitting the millwork. This, it is pointed out, has been the District Council's consistent interpretation of the second sentence of Rule 17 throughout its existence. As so interpreted, it is contended, the second sentence constitutes a valid work protection clause even though it may impinge on the general contractor's freedom to do business with another person.

With respect to the 8(b)(4)(A) allegation, Respondents contend that that section was not violated because, they argue, the District Council's objection to the installation of the doors in question by the jobsite carpenters was

[5] Thus, they point out that the remedy for the breach of the first sentence is a complete work stoppage or strike of the entire job; whereas, the remedy for breach of the second sentence is merely to refrain from handling the precut or prefit millwork.

not directed at enforcing the first sentence of Rule 17 (which they concede is unlawful) but was based solely on the fact that the doors were precut and prefitted and therefore their installation would violate the second sentence of Rule 17 (which they contended is lawful).

With respect to the 8(b)(4)(B) allegations, Respondents contend that they were not engaged in a product boycutt, that they had no dispute with the mill suppliers or door manufacturers, that their sole dispute was with the four general building contractors who, they argue, are the primary employers, and that they were willing to, and in one case did, violate Rule 17 and install doors upon payment to the jobsite carpenters of the wages lost in not performing the work of cutting and fitting. No violations have been established, Respondents contend, because their sole object in refusing to install the precut or prefit doors was the preservation of the work and earnings of the members of the bargaining unit represented by the District Council, that they sought to accomplish this object by enforcing the second sentence of Rule 17 against subcontracting such work, and that this is a lawful object.

With respect to the General Counsel's contentions that the building contractors did not have "control" over the assignment of the cutting out and fitting work because they had to follow the architect's specifications, Respondents answer as follows: In the first place, it was the owners of the buildings who "controlled" the assignment of the fitting and cutting work in the doors by having the architects prepare specifications which assigned the work to the mill operators, and the building owners are not engaged in commerce or in an industry affecting commerce. Secondly, impossibility of performance has not been held to be a defense where the impossibility results from the act of the party seeking to avoid performance or to excuse nonperformance. That was the situation here because the general contractors were the ones who entered into contracts with the owners which made it impossible

for the general contractors to live up to the second sentence of Rule 17 of their collective-bargaining agreement. Finally, adherence to the "control" theory would unstabilize labor relations because a contractor would be absolved of his contractual obligations to the union representing his employees simply by entering into an agreement with a third party containing provisions inconsistent with his collective-bargaining agreement.

The Respondents further contend that the Affiliated Locals are not labor organizations within the meaning of the Act and that, in any event, there was no proper service of the complaint upon them.

F. Concluding findings

1. As to the Section 8(e) allegations

The complaint alleges that Respondents violated Section 8(e)[9] of the Act by entering into contracts or agreements containing Rule 17 and by maintaining and enforcing said Rule at all times thereafter. I agree with the Respondents that Rule 17 deals with two separate and unrelated subjects, imposing different obligations and providing for different remedies for their breach. Thus, the first sentence deals with the "Union Label" of the United Brotherhood of Carpenters and Joiners of America. It requires all mill work on the job to bear such label. It makes it mandatory upon the employees to strike the entire job in the event of a breach of this requirement. The second sentence deals with precut and prefit millwork. It requires the employees to refuse to handle material which has been precut or prefit at a mill prior to its arrival on the jobsite, but permits them to continue to work on the job in all other respects. The two sentences bear no relation to each other.

[9] Insofar as herein pertinent, Section 8(e) makes it "an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person . . ."

I therefore agree that they should be treated separately and in the same manner as if they had appeared in two separate paragraphs or rules.

a. The "Union Label" sentence

Respondents concede, as they must, that this sentence is violative of Section 8(e) of the Act. The May 1963 renewals or extensions of the contracts or agreements containing this provision of Rule 17 constitute an "entering into any contract or agreement" within the meaning of Section 8(e), as the Board has held and as Respondents concede. Respondents have continued to maintain the agreements containing this provision of Rule 17. However, the record affirmatively shows that Respondents have not enforced this sentence during any time cognizable by the complaint.[10] And the General Counsel does not appear to make any contrary contention. It is therefore obvious that Respondent District Council has violated Section 8(e) of the Act only in the foregoing respect, as said Respondent concedes.

The relevant agreements recite that they are made with the District Council "acting for and on behalf of itself and of all of the Local Unions of the United Brotherhood of Carpenters and Joiners of America, located and having jurisdiction" in the five-county area. The liability of the Affiliated Locals for the Section 8(e) violation therefore depends on whether or not they are labor organizations within the meaning of the Act. Section 2(5) defines a labor organization as being any organization "in which employees participate and which exists for the purposes, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of

[10]The doors which were delivered to the jobsites of Nason bore a union label, but not a carpenters union label; the doors which were delivered to the jobsite of Frouge bore no union label at all. Yet, as previously found, the objection which the District Council made to Nason was that the hanging of the doors would violate the contract because they were prefit doors, and the Nason's carpenters continued to work on the job. Also, as previously found, of the 3,600 doors which were cut out and fitted by Frouge's carpenters on the jobsite, none bore a union label of any kind.

employment, or conditions of work."[11] There is no question but what the Affiliated Locals are organizations in which employees participate. It is equally clear to me from all the evidence, as I further find, that they exist for the purpose, at least in part, of dealing with employers concerning the aforestated subjects through their elected delegates to the District Council and other representatives of the District Council elected by such delegates. On facts almost identical with those in the instant case, the Board found an Affiliated Local of the Ohio Valley Carpenters' District Council to be a labor organization.[12] I therefore find, in agreement with the General Counsel and contrary to the contentions of the Respondents, that the Affiliated Locals are labor organizations within the meaning of Section 2(5) of the Act and that in view of the relationship between them and the District Council, as previously detailed, proper service of the complaint was made upon the Affiliated Locals through the District Council.

I find that by their conduct in May 1963, in renewing or extending the agreements which contained the "Union Label" sentence of Rule 17 and in thereafter maintaining said agreements with said sentence therein, Respondents District Council and its Affiliated Local Unions have engaged in unfair labor practices within the meaning of Section 8(e) of the Act.

b. The "will not handle" sentence

As previously noted, Respondents contend that by stating what the carpenters on the jobsite will not do (that is, they will not handle material on the jobsite if such material

[11] This definition is also included in the definition of a labor organization in Section 3(i) of the Labor-Management Reporting and Disclosure Act of 1959, as amended in June 1960. As previously noted, each of the Affiliated Locals filed the reports required of labor organizations by Section 201 of that Act.

[12] Peter Kiewit Sons Co., 132 NLRB 295, 300-303. Although the Trial Examiner recommended dismissal of the complaint on the merits, both the Carpenters' District Council and the affiliated Local involved filed vigorous exceptions to the Trial Examiner's findings that the Local was a labor organization within the meaning of the Act. The Board affirmed the Trial Examiner's findings on this issue without comment.

has been cut out and fitted at a mill prior to its delivery to the jobsite), the second sentence of Rule 17 is a layman's effort contractually to preserve for these outside or jobsite carpenters the tasks of cutting out and fitting the millwork referred to in the sentence. On the other hand, the General Counsel and the Charging Party contend that the second sentence constitutes a consent in advance to a boycott of the material which the carpenters will not handle and touches others who have no contractual relationship with Respondents.

All work assignment or work protection clauses, like all subcontracting clauses, prima facie violate the statute. However, the Board has recognized that not all such clauses, despite their "cease doing business" consequence, are within the intendment of Section 8(e) of the Act.[18] And whether a particular work assignment or work protection clause is violative of Section 8(e) because it may affect relationships between the employer and subcontractors doing that work must depend, as the Board has further recognized, upon "the language used, the intent of the parties and the scope of the restriction . . ." Milk Drivers Local 546, supra.

The agreement between the Respondents and the contractors covers a unit of employees who perform "carpentry work" (Article II). The tasks of "cutting out and fitting" the material listed in the second sentence of Rule 17 are obviously tasks which are normally performed by carpenters. The record shows that there have been occasions when millwork, including doors, came to a jobsite without having been previously cut out and fitted, that the tasks of cutting out and fitting such millwork, including doors, were considered by the contracting parties to be unit work to be performed by the jobsite carpenters, and that the carpenters on the jobsite did in fact perform those tasks on those occasions. The "will not handle" sentence was the

[18] See, e. g., Milk Drivers etc., Local 546, Teamsters (Minnesota Milk Company), 138 NLRB 1314, 1316, enfd. F. 2d (C.A. 8), 52 LRRM 2589; Ohio Valley Carpenters District Council (Cardinal Industries, Inc.), 136 NLRB 977, 985-986 and 144 NLRB No. 16.

language used in an attempt to protect and preserve this type of work for the jobsite carpenters. It is true, however, that the effect of the "will not handle" provision would bring about a reduction or partial cessation of business with the millwork suppliers whose carpenters also performed the tasks of cutting out and fitting.

Robert Gray, secretary-treasurer of the District Council, credibly testified that the tasks of cutting out and fitting millwork, including doors, have traditionally been performed by the carpenters employed on the jobsite and that the District Council has consistently interpreted this provision of Rule 17 as a work assignment or work protection clause. He further credibly testified that he has always sought to enforce this provision of Rule 17 whenever violations were called to his attention in order to protect the jobsite carpenters from being deprived of work and wages which rightfully belonged to them.[14] That the District Council's objection was not aimed at the precut or prefit millwork but was solely directed at the loss of the cutting out and fitting work which would otherwise be performed by the jobsite carpenters, is clearly demonstrated by Gray's offer to McDonnell and Driscoll to have the precut and prefit doors hung if they would pay the jobsite carpenters for the amount of time it would have taken them to perform the work of cutting out and fitting the doors on the jobsite and by the fact that the jobsite carpenters did in fact hang the precut and prefit doors when Driscoll agreed to this arrangement, all as previously found.

I am convinced and find that the tasks of cutting out and fitting millwork, including doors, has, at least customarily, been performed by the carpenters employed on the jobsite. Certainly, this provision of Rule 17 is not con-

[14] The record does show that there were some jobs where the jobsite carpenters did hang precut or prefit doors, and that about one-third of the total number of doors shipped into the Philadelphia area by Mohawk Flush Doors, Inc. and United States Plywood Corporation were precut or prefit. Gray testified that he would not deny that there may have been jobs where the jobsite carpenters did hang precut or prefit doors but explained that, with only 11 business agents to police 500 contracts, violations were not always detected or timely reported.

cerned with the nature of the employer with whom the contractor does business nor with the employment conditions of other employers or employees, nor does it attempt to control such other employers or employees. The provision guards against encroachments on the cutting out and fitting work of the contract unit employees who have performed that work in the past. Its purpose is plainly to regulate the relations between the general contractor and his own employees and to protect a legitimate economic interest of the employees by preserving their unit work. Merely because it incidentally also affects other parties is no basis for invalidating this provision.

I find that the second sentence of Rule 17 is a lawful work protection or work preservation provision and that Respondents have not violated Section 8(e) of the Act by entering into agreements containing this provision and by thereafter maintaining and enforcing this provision.

2. As to the 8(b)(4)(A) allegations

In order to sustain an allegation of an 8(b)(4)(i) or (ii)(A) violation, the General Counsel must show that an object of the proscribed conduct was "forcing or requiring any employer . . . to enter into any agreement which is prohibited by Section 8(e) of the Act." It is clear, as previously found, that an object of the District Council's conduct in directing the carpenters on the four specific jobsites in question not to hang the precut or prefit or premachined doors was to enforce that provision of Rule 17 which states that no member will handle precut or prefit doors.[15] As I have previously found that an agreement

[15]In the case of Frouge, the representatives of the District Council referred Frouge to Rule 17 of the bylaws, which in this respect is identical with Rule 17 in the contracts with the other contractors, except that the following is added to the last sentence: "And is not applicable to metal doors, transoms, or to any of the above-mentioned items that bear the label of the Brotherhood." It is obvious, however, that the District Council's objection was based solely on the ground that the doors were premachined and not on the absence of the label of the Brotherhood, as previously found. This is further verified by the fact that the carpenters were permitted to do the work of cutting out, fitting, and hanging the 3,600 "plank" doors which had no union label of any kind, also as previously found.

containing such a provision is not prohibited by Section 8(e) of the Act, it follows, as I further find, that Respondents did not violate Section 8(b)(4)(i) and (ii) (A) of the Act. I will accordingly recommend the dismissal of these allegations.

3. As to the 8(b)(4)(B) allegations

While it would appear at first blush that the same conclusions should be reached with respect to the allegations of violations of Section 8(b)(4)(i) and (ii)(B) of the Act, controlling Board precedents dictate a different result with respect to three of the general contractors, Nason, McDonnell, and Driscoll, because they did not have control over the assignment of the work of cutting out and fitting doors to the jobsite carpenters.[16] As the specifications required the use of precut or prefit doors and the three contractors were required by contract to follow the specifications absent the consent of the owners of the respective projects to a change, the work of cutting out and fitting doors was thereby assigned by the owners to the mill suppliers and the general contractors were merely selected by the owners to carry out this predetermined assignment. The specifications thus effectively deprived these three general contractors of control of the assignment of this work and Rule 17 of their contract therefore was no longer applicable. They could not grant the District Council's request that the work of cutting out and fitting doors be done on the jobsite, and were powerless to settle the dispute, because that work was nonexistent. In these circumstances, the effect which the District Council's conduct against the general contractors was designed to produce was to force or require the respective owners of the projects to reassign the disputed work to the general contractors by agreeing to change the specifications so as to eliminate the requirement for precut or

[16] Ohio Valley Carpenters District Council (Cardinal Industries, Inc.), 144 NLRB No. 18; Local 5, United Association of Journeyman, etc. (Arthur Venneri Co.), 187 NLRB 823, 830-831, enfd. 331 F. 2d 366 (App. D.C.).

prefit doors[17] and to compel the three general contractors to change and reduce their contracts with their respective mill suppliers (T. W. Hammond & Bro., John A. Yohn Cox, and Boyertown Planing Mill Co.), and the latter in turn with the door manufacturers (Oxford Plastics Co. and Hardwood Products Corporation), from prefit and precut doors to "blank" or "blind." Thus, the real targets of the District Council's conduct were the respective owners of the three projects, the mill suppliers, and the door manufacturers. The three general contractors, Nason, McDonnell, and Driscoll, were in these instances the secondary targets against whom the pressure was directed in the form of refusing to hang the precut and prefit doors in an effort to achieve the other objectives.

Contrary to Respondents' contentions, an objective of causing the kind of disruption of existing business relationship hereinabove described, has been held to constitute a "cease doing business" object within the meaning of Section 8(b)(4)(B) of the Act.[18] The fact that the District Council was also seeking to enforce the "will not handle" provision of Rule 17 of its contract with the three general contractors, a provision which I have previously found to be a lawful work protection or work preservation clause, "does not make lawful conduct, which in the absence of such a prevision, is prohibited by statute, any more than the then—lawful 'hot-cargo' clause in the Sand Door case was a defense to secondary boycott activity aimed at securing compliance therewith. Local 1976, United Brotherhood of Carpenters, etc. (Sand Door & Plywood Co.) v. N.L.R.B. 357 U. S. 93."[19] Nor is there any merit to Respondents' fur-

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[17]Contrary to Respondents' contentions, it is not essential to a finding of a violation of Section 8(b)(4)(B) in this case that the project owners be engaged in commerce or in an industry affecting commerce.

[18]Local 3 International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company), 140 NLRB 729, 730, enfd. F. 2d (C.A. 2), 55 LRRM 2076; see also Upholsters Frame & Bedding Workers etc., (Minneapolis House Furnishing Co.), 132 NLRB 40, 44-45; Local 102 International Ladies Garment Workers Union, AFL-CIO (Henry Rosenfeld, Inc.), 144 NLRB No. 95 (TXD p. 6); and Retail Clerks Union Local 770, et al. (Food Employers Council, Inc.), 135 NLRB No. 33.

[19]Local 5 case, supra, 137 NLRB at p. 831.

ther contention that it was the general contractors themselves who made it impossible to assign the work to the jobsite carpenters by their conduct in accepting a contract where the specifications called for precut or prefit doors. As the Court of Appeals stated in the Local 5 et al. case supra (321 F. 2d 366, 370), ". . . that is beside the point, for a secondary boycott is not justified, even when used as a retaliatory weapon." As for Respondents' final argument that giving conclusive weight to the contractors' lack of control over the assignment of the work will unstabilize labor relations between the contractor and his employees who are covered by a collective-bargaining agreement, that is an argument which must be addressed to the Board.

It is conceded, as the undisputed facts previously detailed plainly disclose, that the District Council and its admitted agents, Boyer and Gray, directed the jobsite carpenters on the projects of Nason, McDonnell and Driscoll to cease and refrain from hanging the precut and prefit doors. Thus, to that extent, they induced and encouraged a work stoppage or a refusal to perform services by individuals employed by persons engaged in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4)(i) of the Act. The statements of Boyer and Gray, as well as this work stoppage, also constitutes conduct which threatened, coerced, and restrained Nason, McDonnell and Driscoll within the meaning of Section 8(b)(4)(ii) of the Act.[30] An object in each case was one prohibited by Section 8(b)(4)(B) of the Act, as previously found. I therefore find that the District Council and its agents, Boyer and Gray, violated Section 8(b)(4)(i) and (ii)(B) of the Act.[31]

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[30]Ohio Valley Carpenters District Council, supra; General Teamsters Local No. 294; etc. (Curly's Dairy, Inc., et al.), 144 NLRB No. 77 and cases cited therein.

[31]I find that the District Council and its agents, Kane and Goldstein, have not violated these sections of the Act with respect to the fourth general contractor, Frouge. On this project, the primary dispute was with Frouge because this contract had control over the assignment of the work of cutting out and fitting doors and therefore was in a position to, as in fact he did, settle the dispute with the District Council by granting its request to assign that work to the carpenters on the job-site.

There is no evidence that the Council and its agents were also acting as agents of the Affiliated Locals in engaging in the unlawful conduct hereinabove found. Nor is there any evidence that any representative or officer of the Affiliated Locals engaged in said unlawful conduct or that they participated with the District Council in a joint venture. Although the District Council is composed of delegates elected by the Affiliated Locals, that alone does not create an agency relationship between the Council and the Affiliated Locals.[32] I will therefore recommend dismissal of these allegations as to the Affiliated Local Unions.

IV. The effect of the unfair labor practices upon commerce

The activities of Respondents set forth in section III, above, occurring in connection with the operations of the Companies set forth in section I, above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

Having found that some Respondents engaged in certain unfair labor practices, I will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I find no merit in Respondents' contentions that no order should be recommended with respect to the conceded violations of Section 8(e) of the Act because the General Counsel has declined Respondents' offer to settle this part of the case on the basis of Respondents' agreement not to enforce or enter into any agreement containing the "Union Label" sentence of Rule 17. Respondents do not contend that such a settlement agreement would also have included their con-

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[32] Pasco-Kennewick Building and Construction, etc., 111 NLRB 1255, 1257.

sent to a Board order, which is necessary to effectuate the policies of the Act and to bar the resumption of such and similar conduct.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. The following Respondents are labor organizations within the meaning of Section 2(5) of the Act: (a) Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called District Council, and (b) its Affiliated Local Unions.

2. Robert H. Gray, secretary-treasurer of the Respondent District Council, and District Council Representatives Charles L. Boyer, Edward Kane, and Edward Goldstein are agents of Respondent District Council within the meaning of Section 2(13) and 8(b) of the Act.

3. Nason and Cullen, Inc., John J. McDonnell, Inc., L. F. Driscoll Company, and Frouge Corporation, herein respectively called Nason, McDonnell, Driscoll, and Frouge, are each engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) and 8(b)(4) of the Act.

4. By entering into and maintaining an agreement containing the "Union Label" sentence of working Rule 17, Respondents District Council and its Affiliated Local Unions have engaged in unfair labor practices within the meaning of Section 8(e) of the Act.

5. By instructing the carpenters employed by Nason, McDonnell and Driscoll to cease and refrain from hanging the prefit and precut doors and by the conduct of Gray and Boyer, as set forth in section III, C, supra, Respondents District Council and its agents, Gray and Boyer, have induced and encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of their employment to perform services for their respective em-

ployers, and have threatened, restrained, and coerced Nason, McDonnell, and Driscoll, in each case with an object of forcing or requiring the aforenamed employers to cease doing business with their respective mill suppliers (T. W. Hammond & Bro., John A. Yohn Co., and Boyertown Planing Mill Co.), and of forcing or requiring the said respective mill suppliers to cease doing business with the door manufacturers (Oxford Plastics Co. and Hardwood Products Corporation).

6. By the conduct set forth in the preceding paragraph, Respondents District Council and its agents, Gray and Boyer, have engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

8. Respondents District Council, its Affiliated Local Unions, and its agents, Gray, Boyer, Kane and Goldstein, have not engaged in any unfair labor practices alleged in the complaint but not herein found.

RECOMMENDED ORDER

Upon the basis of the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby recommend that:

1. Respondents, Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and its Affiliated Local Unions, their officers, representatives, agents, successors, and assigns, shall:

A. Cease and desist from entering into and maintaining any agreement containing the "Union Label" sentence of Working Rule 17, or any like or related provision.

B. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(1) Post in conspicuous places in Respondents' business offices, meeting halls, and all places where notices to mem-

bers are customarily posted, copies of the notice attached hereto and marked "Appendix B."[23] Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by Respondents' authorized representatives be posted by Respondents immediately upon receipt thereof and be maintained by them for 60 consecutive days. Reasonable steps shall be taken by Respondents to insure that such notices are not altered, defaced, or covered by any other material.

(2) Furnish to the Regional Director for the Fourth Region signed copies of the aforementioned notice for posting by L. F. Driscoll Company, Frouge Corporation and by any employers in the Philadelphia, Pennsylvania, area who are members of the General Building Contractors Association which has a collective-bargaining agreement with Respondents, if said Employers agree, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed by Respondents, as indicated, be forthwith returned to the Regional Director for disposition by him.

(3) Notify the said Regional Director in writing, within 20 days from the date of receipt of this Decision and Recommended Order, what steps the Respondents have taken to comply herewith.[24]

2. Respondent Metropolitan District Council of Philadelphia and Vivinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers,

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[23] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER," in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[24] In the event that this Recommended Order be adopted by the Board, the provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondents have taken to comply herewith."

representatives, successors, assigns, and agents, including Robert H. Gray and Charles L. Boyer, shall:

A. Cease and desist from inducing or encouraging any individual employed by Nason and Cullen, Inc., John J. McDonnell, Inc., L. F. Driscoll Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services and cease and desist from threatening, coercing, or restraining any of the aforenamed employers or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require any of the aforementioned employers or persons to cease doing business with mill suppliers, including T. W. Hammond & Bro., John A. Yohn Co., and Boyertown Planing Mill Co., or to force or require said mill suppliers to cease doing business with door manufacturers, including Oxford Plastics Co., and Hardwood Products Corporation.

B. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(1) Post in conspicuous places in Respondents' business offices, meeting halls, and all places where notices to members are customarily posted, copies of the notice attached hereto and marked "Appendix C."[25] Copies of said notice to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the representatives of Respondents and by the individual Respondents herein, be posted by said Respondents, as aforesaid, immediately upon receipt thereof and maintained by them for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

[25]See footnote 23, supra.

(2) Furnish to the Regional Director for the Fourth Region signed copies of the aforementioned notice for posting by each of the employers and persons mentioned in paragraph 1 A, supra, who are willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed by Respondents, as indicated, be forthwith returned to the Regional Director for disposition by him.

(3) Notify said Regional Director in writing, within 20 days from the date of receipt of this Decision and Recommended Order, what steps Respondents have taken to comply herewith.[26]

I further recommend that the complaints be dismissed insofar as it alleges violations of the Act by Respondents Edward Kane and Edward Goldstein, and insofar as it alleges additional violations of the Act, not herein found, by all remaining Respondents.

Dated at Washington, D. C.

(s) Louis Libbin
Trial Examiner

[26]See footnote 24, supra.

In The

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

National Woodwork Manufacturers Association, a non-profit corporation, for itself and on behalf of its members,

and

Hardwood Products Corporation, a Wisconsin corporation, and Mohawk Flush Doors, Inc., an Indiana corporation, - - - - Petitioner,

v.

National Labor Relations Board, Respondent.

} Case No. 14904

PETITION TO REVIEW AND MODIFY AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Seventh Circuit:

National Woodwork Manufacturers Association, an Illinois corporation, not for profit, for itself and on behalf of its members, Hardwood Products Corporation, a Wisconsin corporation, and Mohawk Flush Doors, Inc., an Indiana corporation, all being aggrieved by a final order of the National Labor Relations Board (herein called the "Board"), entered on November 12, 1964, denying in part the relief sought, respectfully petition this Court to review and modify said order, which was entered by the Board in proceedings instituted by it against Metropolitan Dis-

trict Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and its affiliated Local Unions, in Case No. 4-CE-9, and against Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and its affiliated Local Unions, and said Council's officer, Robert H. Gray, Secretary-Treasurer, and Representatives Charles L. Boyer, Edward Kane and Edward Goldstein, in Case No. 4-CC-258 (which cases were consolidated by amended complaint dated October 4, 1963). Respondents in the Board proceeding are hereinafter referred to collectively as the "Council," unless otherwise specifically mentioned.

In support of this petition, your petitioners respectfully show:

JURISDICTION

1. (a) Your petitioner National Woodwork Manufacturers Association (herein called "NWMA") is, and at all times herein mentioned was, a not-for profit corporation organized and existing under the laws of the State of Illinois, with its principal office in the City of Chicago, County of Cook, State of Illinois, whereat it transacts business for itself and on behalf of its members, within this circuit. Members of NWMA manufacture prefabricated doors and other millwork sold and delivered to the Philadelphia construction area. Your petitioner Hardwood Products Corporation (herein called "Hardwood") is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Wisconsin, with its principal office in the City of Neenah, County of Calumet, State of Wisconsin, whereat it transacts business, within this circuit. Hardwood manufactured the doors involved on the Driscoll and McDonnell jobs in the instant case. Your petitioner Mohawk Flush Doors, Inc. (herein called "Mohawk") is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Indiana, with an office and plant in the City of

South Bend, County of St. Joseph, State of Indiana, within this circuit. Mohawk manufactured the doors involved on the Frouge job herein.

(b) The Board's order, which is the subject of this petition, is a final order denying in part the relief sought by petitioners, and petitioners are persons aggrieved by such order.

(c) By reason of matters alleged in subparagraphs (a) and (b) of this paragraph 1, this Court has jurisdiction of this petition and of the matters in dispute herein under Section 10(f) of the Labor Management Relations Act, 1947, as amended (herein called the "Act").

NATURE OF THE PROCEEDINGS AS TO WHICH REVIEW IS SOUGHT

1. On June 13, 1963, NWMA and Charles B. Mahin, an individual, filed charges with the Philadelphia Regional Office of the Board against the Council, alleging that the Council and its agents had engaged and were engaging in unfair labor practices in violation of Section 8(b)(4)(A), 8(b)(4)(B) and 8(e) of the Act. On August 27, 1963, the Board issued a complaint based on said charges against the Council and its agents in two cases designated Case No. 4-CE-9 and Case No. 4-CC-258. As these two cases involved the same subject matter, they were consolidated for hearing. The complaint was amended on October 4, 1963.

The Council exercises jurisdiction over carpenters in the construction industry in the metropolitan area of Philadelphia, Pennsylvania, where it enforced a product boycott against the use of premachined, precut, and prefitted doors on four construction jobs.

The basis of the complaint was that the Council during the first part of 1963 refused to allow its members to hang premachined, precut and prefitted doors on the Coatesville Hospital job (contractor—L. F. Driscoll Company), on the North Junior High School job (contractor—John J. McDonnell, Inc.), on the St. Aloysius Academy job (con-

tractor—Nason & Cullen, Inc.), and on the Naval Capehart Housing Project (contractor—The Frouge Company). The Council took the position that a portion of a work rule in its labor contract, to which these four contractors were bound, allowed it to refuse to hang the premachined, precut, and prefit doors. This portion of the work rule is quoted, infra, paragraph 6.

The hearing was held on October 16, 17 and 18, 1963, at Philadelphia, Pennsylvania, before Trial Examiner Louis Libbin.

2. Pursuant to Section 10(1) of the Act, the Board, on July 31, 1963, petitioned the United States District Court for the Eastern District of Pennsylvania for an injunction against the continuance of the alleged unlawful activity of the Council, pending the final adjudication of the matter by the Board. This suit was resolved by stipulation of the parties dated August 12, 1963, in which the Council undertook to cease and desist committing the allegedly unlawful activity during the pendency of the Board proceedings.

3. The Trial Examiner's Decision was filed on February 7, 1964, finding that certain activity of the Council constituted violations of Section 8(b)(4)(B) of the Act and recommending that the Council cease and desist from inducing or encouraging any individual employed by Nason & Cullen, Inc. ("Nason"), John J. McDonnell, Inc. ("McDonnell"), L. F. Driscoll Company ("Driscoll"), or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, and cease and desist from threatening, coercing or restraining any of the aforesaid employers or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require any of the aforementioned employers or per-

sons to cease doing business with mill suppliers, including T. W. Hammonds, John A. Yohn Co., and Boyertown Planing Mills, or to force or require said mill suppliers to cease doing business with door manufacturers, including Oxford Plastic Products Co. ("Oxford") and Hardwood. The Decision further recommended that the Council take certain affirmative action to effectuate the policy of the Act. The General Counsel and Charging Parties filed statements of support with respect to part of the Decision, but filed exceptions, with supporting briefs, to the Examiner's failure to find that certain other of the Council's activities violated Sections 8(b)(4)(B, 8(e), and 8(b)(4)(A) of the Act, and to his failure to recommend adequate affirmative action by the Council. The Council excepted in part to the Decision and filed a brief.

4. On November 12, 1964, the Board affirmed in full the ruling of the Trial Examiner that violations of Section 8(b)(4)(B) had been proved as to three of the four jobs on which work stoppages occurred, but that there had been no violation of Section 8(b)(4)(B) on the fourth job. It also affirmed the Trial Examiner's ruling that there had been no violation of Section 8(b)(4)(A) and only a technical violation of Section 8(e). (A copy of the Board's Decision, which includes the Trial Examiner's Decision, is attached hereto as Exhibit A.)

5. The Board adopted the findings, conclusions and recommended order of the Trial Examiner's decision.*

6. In the product boycott aspects of this case, it was found and concluded that there was an 8(b)(4)(B) violation only on those three jobs (Driscoll, McDonnell and Nason) in which the contractor had no control over whether premachined, precut and prefit doors, or blank doors, would be used. With respect to the one job on which the general contractor (Frouge) did have such control, it was concluded that the Council's work stoppage was not in viola-

*The findings, conclusions and recommended order of the Trial Examiner are therefore referred to herein as the findings, conclusions and order of the Board and, except as otherwise noted, page references herein are to the Trial Examiner's Decision (Exhibit A).

tion of 8(b)(4)(B) but was a lawful enforcement of a work preservation rule found in the contract between the Council and the contractor's association, which rule provides in part:

> "No member of this District Council will handle material coming from a mill where cutting out and fitting has been done for butts, locks, letter plates, or hardware of any description, nor any doors or transoms which have been fitted prior to being furnished on job, including base, chair, rail, picture moulding, which has been previously fitted. . . ."

7. It was concluded that the above-quoted section of the labor contract did not violate Section 8(e) of the Act but was rather a lawful work-preservation rule.

STATEMENT OF POINTS

In support of their petition to review the parts of the Decision and Order of the Board hereinafter specified, petitioners rely on the following points. With respect to each of them, petitioners contend that the Board's ultimate finding or conclusion (including all preliminary and subsidiary findings upon which the ultimate finding or conclusion is based) is erroneous as a matter of law and is not supported by the evidence.

A. The Board erred in its findings and conclusions with respect to alleged violations of Section 8(b)(4)(i)(ii)(B) as follows:

1. The Board erred in making and entering the concluding finding with reference to Council's conduct in respect of the Frouge job, as follows (p. 5):

> "I find that the District Council and its agents, Kane and Goldstein, have not violated these sections of the Act with respect to the fourth general contractor, Frouge. On this project, the primary dispute was with Frouge because this contractor had control

over the assignment of the work of cutting out and fitting doors and therefore was in a position to, as in fact he did, settle the dispute with the District Council by granting its request to assign that work to the carpenters on the jobsite";

and in failing to conclude to the contrary.

2. The Board erred in failing to find as a fact and to conclude in law that Council violated Section 8(b)(4)(B) by inducing carpenters employed by Frouge to refuse and refrain in the course of their employment to perform services or handle products and by threatening, coercing, and restraining Frouge, for the purpose of forcing and requiring Frouge to stop doing business with mill suppliers, of forcing mill suppliers to stop doing business with door manufacturers, and of forcing all parties to cease using, selling, transporting, or otherwise dealing in prefabricated* doors.

3. The Board erred in adopting the following conclusion of law and recommendation (pages 16, 18):

"8. Respondents District Council, its Affiliated Local Unions, and its agents, Gray, Boyer, Kane and Goldstein, have not engaged in any unfair labor practices alleged in the complaint but not herein found."

* * * * * * * *

"I further recommend that the complaint be dismissed insofar as it alleges violations of the Act by Respondents Edward Kane and Edward Goldstein, and insofar as it alleges additional violations of the Act, not herein found, by all remaining Respondents."

4. The Board erred in the conclusion of law implicit in the statement beginning at paragraph 13, line 44, and ending at page 14, line 28 (which rationale was the basis

*The word "pre-fabricated" is used herein to describe doors which are processed at the factory in various respects, i. e., pre-cut, pre-fit, pre-finished, pre-hung, etc.

of the finding of no violation in the Frouge case) that the presence or absence of control concerning the use of blank or pre-fabricated doors is the determinative factor as to whether or not the Council violated Section 8(b)(4)(B); and in failing to find to the contrary.

5. The Board erred in its Order regarding the Council's unlawful conduct on the Nason, McDonnell and Driscoll jobs, in that the Order, in the context of the Board's Decision, fails to prohibit future boycotts of pre-fabricated doors if the contractors have "control" as to whether blank or pre-fabricated doors will be used.

6. The Board erred in failing to find as a fact that the exaction demanded by the Council to hang precut or prefit doors was in excess of $4.25 to $4.50 per door.

7. The Board erred in finding (page 12, lines 26-28) that the cutting and fitting of material listed in the second sentence of Rule 17 is obviously work "normally performed by carpenters"; and the Board erred in the implication that this statement, if true, is of legal consequence.

8. The Board erred in finding (page 12, lines 25-39) that the "will not handle" sentence of Rule 17 was language used to protect and preserve the cutting and fitting of doors for jobsite carpenters; and the Board erred in the implication that this statement, if true, is of legal consequence.

9. The Board erred in the finding (page 12, lines 41-49) that Robert Gray credibly testified that the cutting out and fitting of millwork has traditionally been performed by jobsite carpenters, that the District Council has consistently interpreted this provision of Rule 17 as a work-assignment or work-protection clause; and the Board erred in the implication that these statements, if true, are of legal consequence.

10. The Board erred in the finding (page 12, line 49, to page 13, line 5) that the District Council's objection was not aimed at precut or prefit millwork, but was solely directed to the loss of work which would otherwise be

performed by jobsite carpenters, and the conclusion that this is demonstrated by Gray's offer to hang the doors for a payment of the time it would have taken to do the work and by the fact that the doors were hung on this basis; and the Board erred in the failure to find that such requirement by Respondents was an exaction to coerce and force the contractors and others not to purchase and handle precut and prefit doors.

11. The Board erred in the finding (page 13, lines 7-19) reading as follows:

> "I am convinced and find that the tasks of cutting out and fitting millwork, including doors, has, at least customarily, been performed by the carpenters employed on the jobsite. Certainly, this provision of Rule 17 is not concerned with the nature of the employer with whom the contractor does business nor with the employment conditions of other employers of employees, nor does it attempt to control such other employers or employees. The provision guards against encroachments on the cutting out and fitting work of the contract unit employees who have performed that work in the past. Its purpose is plainly to regulate the relations between the general contractor and his own employees and to protect a legitimate economic interest of the employees by preserving their unit work. Merely because it incidentally also affects other parties is no basis for invalidating this provision.";

and the Board erred in the implication that such conclusions, if true, have legal consequence.

12. The Board erred in the finding and statement (page 14, lines 2-8) that the contractors' procurement of precut and prefinished doors was as "asignment of the work of cutting out and fitting doors," and that the "work of cutting out and fitting doors was thereby assigned by the owners to the mill suppliers and the general contractors"; and the Board erred in failing to find, on the contrary, that the

action taken by the contractors was the purchase of products in a stated condition and was not an assignment of work.

13. The Board erred in failing to find that in the past, large quantities of precut and prefit doors and other prefabricated millwork have been shipped into and installed in the Philadelphia area.

Petitioners submit that the Council's conduct on the Frouge job (as well as on the Nason, Driscoll and McDonnell jobs) clearly established a violation of Section 8(b)-(4)(B) under long-established court and Board precedent. There was (1) inducement of employees, and (2) threats, coercion, and restraint of employers for the proscribed objectives of forcing or requiring the contractors and their suppliers (a) to cease selling, handling or dealing in the products of any other producer, processor or manufacturer, or (b) to cease doing business with any other person. It was a clear-cut boycott of the products of door manufacturers and distributors.

The Board's holding that "control" of purchases by a boycotted employer is determinative of violation is clearly erroneous as a matter of law. As will be demonstrated in petitioners' brief, this concept would open a broad new loophole in the secondary boycott provisions of the Act and is contrary to long-established court and Board secondary boycott decisions. It is directly contrary to and would reverse the decision of this Court in the landmark Joliet Contractors case.*

B. The Board erred in its findings and conclusions with respect to alleged violation of Section 8(e) of the Act.

Contractors Nason, McDonnell and Driscoll were all covered by contracts with the Council, which provided in part:

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*Joliet Contractors Ass'n. v. NLRB, 202 F. 2d 606 (C.A. 7, 1953).

"Rule 17. No employee shall work on any job on which cabinet work, fixtures, millwork, sash doors, trim or other detailed millwork is used unless the same is Union-made and bears the Union Label of the United Brotherhood of Carpenters and Joiners of America. No member of this District Council will handle material coming from a mill where cutting out and fitting has been done for butts, locks, letter plates, or hardware of any description, nor any doors or transoms which have been fitted prior to being furnished on job, including base, chair, rail, picture moulding, which has been previously fitted. This section to exempt partition work furnished in sections."

Contractor Frouge was subject to the Council's by-law Rule 17, which read substantially the same as the above except that the third sentence of the by-law rule read as follows:

"This section to exempt partition work furnished in sections, and is not applicable to metal doors, transoms, or to any of the above-mentioned items that bear the label of the Brotherhood."

The whole purpose, direction, and thrust of this rule was to bar from jobs in the Philadelphia area all forms of millwork not bearing a Carpenter's union label and all prefabricated millwork products which had been cut or fitted at the factory. It is a typical "hot goods" provision of the precise type Congress intended to outlaw by enactment of Section 8(e) of the Act.

The Board erred in its findings of fact and conclusions of law as follows:

1. The Board erred in the finding and conclusion (page 10, lines 29-44) that the first and second sentences of Rule 17 deal with two separate and unrelated subjects bearing

no relation to each other, and that they must be treated separately.

2. Petitioners reallege here by reference the errors in findings and conclusions alleged above under Point A in Paragraphs 3, 7, 8, 9, 10, 11, 12, and 13. As there set forth, the Board erred in its findings and conclusions that Rule 17 was merely a work-preservation rule that did not have the prescribed objective of causing the employers involved to cease or refrain from "handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person," within the meaning of Section 8(e).

3. The Board erred in finding (pages 12-13) that the Council's objection was not aimed at precut or prefit millwork but was directed solely to the loss of work that would otherwise be performed by jobsite carpenters.

4. The Board erred in the finding and conclusion (page 13, lines 21-24) that the second sentence of Rule 17 is a lawful work-protection or work-preservation provision, and that the Council did not violate Section 8(e) of the Act by entering into and maintaining and enforcing this provision.

5. The Board erred in failing to conclude in fact and law that the Council entered into and maintained the agreement containing the second sentence of Rule 17, and that by so doing Council violated Section 8(e) of the Act.

C. The Board erred in failing to find and conclude that the Council violated Section 8(b)(4)(A) of the Act.

1. Rule 17 being unlawful under Section 8(e), Council violated Section 8(b)(4)(i)(ii)(A) by the same inducements of employees and coercion of employers as were involved in the Council's violation of Section 8(b)(4)(B).

2. The Board erred in failing to find and conclude that the Council's conduct in forcing and requiring employers to enter into and maintain Rule 17 violated Section 8(b)(4)(A) and erred in dismissing the Complaint as to all violations alleged but not found by the Trial Examiner.

D. The Board erred by reason of omissions, limitation and ambiguities in its Order as follows:

1. The Board erred by failing to include in its Order appropriate remedial provisions and requirements in respect of illegal conduct alleged in the Complaint but not found by the Trial Examiner and the Board to be violative of Section 8(b)(4)(B) (in respect of the Frouge job), and Sections 8(e) and 8(b)(4)(A) (in respect of all four jobs).

2. The Board erred by failing to order compliance with the proscriptions of Section 8(b)(4)(B) without regard to whether or not the particular contractor involved had "control" over his purchase of pre-fabricated products.

3. The Board erred in failing to specify more exactly the intended scope of the Order by not including the words "but not limited to" after the word "including" at page 18, line 12, and by not including the same language again in line 14 of paragraph 2-A of the Recommended Order; and by failing to add the words "Mohawk Flush Doors, Inc." after the words "Hardwood Products Corporation" in said paragraph 2-A at page 18, line 15.

PRAYER

Wherefore, Petitioners respectfully pray:

1. That the Board be directed to certify for filing with this Court a transcript of the record in this proceeding before the Board, in conformance with the Court's Rule 14(g).

2. That this Court review all that part of the Decision and Order of the Board by which allegations of violation in the Complaint were dismissed and all findings and conclusions with reference to such action.

3. That this Court find and decide that the Board erred in respect of all and each of the assignments of error set forth in the foregoing "Statement of Points."

4. That this Court enter an appropriate order directing compliance with the Act in accordance with its decision herein.

5. That the Petitioners be granted such other and further relief as this Court may deem just and proper.

Respectfully submitted,

National Woodwork Manufacturers Association, Inc.
Hardwood Products Corporation
Mohawk Flush Doors, Inc.,
Petitioners

By Charles B. Mahin, Counsel

Dated this 30th day of November, 1964.

Of Counsel:

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LOcust 3-2550

1* TRANSCRIPT OF TESTIMONY

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

FOURTH REGION

In the Matter of:	
Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Charles B. Mahin, an Individual.	Case No. 4-CE-9
Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, and Said Council's Officer, Robert H. Gray, Secretary-Treasurer, and Representatives Charles L. Boyer, Edward Kane and Edward Goldstein, and Charles B. Mahin, an Individual, and National Woodwork Manufacturers Association.	Case No. 4-CC-258

Room 1510, Bankers Securities Building,
Philadelphia, Pennsylvania,
Wednesday, October 16, 1963.

The above-entitled matter came on for hearing, pursuant to notice, at 2:00 o'clock p.m.

Before:

Louis Libbin, Trial Examiner.

2 Appearances:

M. H. Goldstein and Michael Brodie, 1 E. Penn Square Building, Philadelphia, Pennsylvania, on behalf of the Respondents.

Leo F. Hannon, 1700 Bankers Securities Building, Philadelphia, Pennsylvania, appearing on behalf of the General Counsel.

Charles B. Mahin, Spray, Price, Townsend and Cushman, 134 South LaSalle Street, Chicago, Illinois, appearing on behalf of the Charging Party.

Frank H. Abbott, Schnader, Harrison, Segal and Lewis, 1700 Packard Building, Philadelphia, Pennsylvania, appearing on behalf of the Charging Party.

* * * * * * *

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21 L. CHARLES SCIPIONE, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your full name, please.

A. L. Charles Scipione.

Q. Where are you employed?

A. I am self-employed.

Q. What is the nature of your business?

A. I am an architect.

Q. What type of architect work do you do?

A. I have a general practice.

Q. What is included within that general practice?

A. General practice means that I would render architectural services for any type building.

Q. How long have you been an architect?

A. Ten years.

Q. Are you registered as an architect?

A. Yes, I am.

Q. Where?

A. Pennsylvania and New Jersey.

Q. What degrees, if any, do you hold in the field of architecture?

A. A Bachelor of Architecture, from the University of Pennsylvania, The School of Fine Arts, 1950.

22 Q. Now, are you familiar with the construction of the Saint Aloysius Academy for Boys?

A. Yes, I designed that job.

Q. How was it that you came to design the job?

A. The owners directed me to render architectural services.

Q. Who are the owners?

A. The Sister Servants of the Immaculate Heart of Mary.

Q. And what services did you render for the Sister Servants?

A. Full architectural services.

Q. Which would include what?

A. It would include forming of programs, and of their requirements, designing to facilities requirements, preparation, contract drawings and specifications, the keeping of the accounts and supervision of the construction.

Mr. Hannon: You have mentioned specifications. I ask to have marked for identification this General Counsel's Exhibit No. 3, Mr. Trial Examiner, with the intent not to encumber the record. I only intend to offer those portions of the specifications that are pertinent. I have marked for identification the carpentry and millworking portions of the specifications for the Saint Aloysius Academy for Boys.

(The document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

Q. (By Mr. Hannon) Mr. Scipione, I will ask you to identify what has been marked General Counsel's Exhibit No. 3.

23 A. These are specifications that I prepared for Saint Aloysius for this division.

Q. I draw your attention to Section 18-16(c)(6).

A. Yes, pre-fitting.

Q. Yes. What does pre-fitting mean?

A. Pre-fitting means to prepare the door prior to delivery, so that it could be hung in an opening without doing anything to that door except applying hardware.

Q. What does the term "pre-cutting" mean to you?

A. Pre-cutting could be interpreted exactly the same, with the exception that it could be clarified to the extent—in other words, a pre-fit door or pre-cut door could really mean one and the same, but it should be clarified as to whether this includes cutting or mortising for hardware, or not.

Q. In 18-16, would you describe the doors to be used on this job as Ambas-a-dors? Could you briefly describe an Ambas-a-dor?

A. Yes.

Q. Possibly, for the aid of the Trial Examiner, I would ask Mr. Scipione if he could identify this particular type of product?

A. Yes, these are the doors that I specified that were similar.

Q. This is what you call—

Trial Examiner: This is what you call an Ambas-a-dor?

The Witness: That is a trade name. It is actually a door that is composed of a wood core and is covered
24 with a laminated product of the architect's and owner's choice. In this case it happens to be a plastic surface, finished surface, which is applied to the wood core of the structure of the door.

. . . . . .

Q. (By Mr. Hannon) While you were discussing the services that you rendered on this particular job, what services did you render in the area of doors to be used?

A. With the owner's approval, I had full authorization to select all materials, including doors.

Q. Did you exercise this authorization in this case?

Mr. Goldstein: That is objected to.

Trial Examiner: Overruled.

The Witness: Yes, I did.

Q. (By Mr. Hannon) And these Ambas-a-dors are the doors that you chose for the job?

A. Well, I chose a door that was covered with a similar material. Let's call it by its name—formica. There are other plastic laminates which are similar. In this case, it was a formica that I chose to use, and Ambas-a-dor happened to be a company that fabricated and manufactured this door to my liking.

From my past experience, this door is a sound door.

Q. Now, you also noted that among your duties you also had the duty of seeing that the contractor followed the specifications at the job site. How did this pertain to the doors?

A. Well, he had to follow the specifications to the door also. He had to follow all specifications, and if he didn't follow the specifications that could only be changed if he requested such and I authorized it. If I did approve it, he would do it, and if I didn't approve it he would have to follow the specification.

* * * * * * * *

Trial Examiner: Insofar as your functions are concerned in this project, what had to be done to the pre-cut door or pre-fit door, if anything, before it could be hung on that job?

The Witness: I want to clarify the question in my own mind, and I will answer it this way:

The way that door arrived on the job, there was to be no work done on that door. The only thing that was to be done with that door was to apply the hardware to hang it.

Q. (By Mr. Hannon) From the point of view of the architect on this job, what reason did you have for using this door on—

Mr. Goldstein: Objected to. No one is contesting the

propriety or impropriety of his reasoning. He could have ordered a gold door and it would have made no difference. This is not material.

Trial Examiner: You are asking why he ordered this kind of door?

Mr. Hannon: Why he ordered this type of door.

Trial Examiner: I will let him answer.

The Witness: Because it served the purpose, the conditions and all, both structurally and aesthetically.

* * * * * * *

Cross-examination

* * * * * * *

Q. (By Mr. Goldstein) How many of these interior doors were there to be? Would your specifications show that?

A. No; we are not interested in quantities. In my best recollection, there were 170 formica-faced doors.

Q. Interior or exterior?

A. Interior.

Q. And do you remember how many exterior doors there were to be? Give us it, approximately. We don't need an exact number.

A. A dozen. They were also formica-covered.

Q. We know that. You said that in your specifications, did you not?

A. Yes.

Q. How many contractors bid on the job?

A. Seven.

Q. And was Nason & Cullen a general contractor or a carpentry contractor?

A. A general contractor.

Q. But the work that Nason & Cullen received from your owner, your client, included the carpentry work?

A. Yes, it did.

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34 PHILLIP J. DIAMOND, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your name, please.

A. Phillip J. Diamond.

Q. Where are you employed?

A. Howell, Lewis, Shay & Associates, architects and engineers.

Q. In what capacity are you employed?

A. I am a senior project manager.

Q. Are you an architect?

A. I am a registered architect.

Q. Where are you registered?

A. In Pennsylvania, New York, Delaware, and Maryland.

Q. What is your educational background in the field?

A. I attended Tulane University. I have a Bachelor of Architecture, 1948.

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36 The Witness: Pre-fit—and I will quote from the specifications, and I adhere strongly to the way it was written:

"All doors shall be trimmed square and factory pre-fit to size, cut for hardware, with edges beveled as required. Portions of the hardware—"

Trial Examiner: We can read what is in the specification. The question to you was what does the terminology "pre-fit" mean.

37 The Witness: Pre-fit means that a door is cut and trimmed at a factory and can also mean the proper machining of that door for hardware, bevels, louvres, glass opening, and any other appertures that may be required.

Trial Examiner: That is already performed before the door comes to the job site?

The Witness: Yes, it is a factory job.

Q. (By Mr. Hannon) What do you mean by the term pre-finish?

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38 The Witness: Pre-finishing, in my opinion, means that a door is, the finish of the door, the final actual finish that an architect would desire, is performed at the factory. Pre-finishing, of its own necessity, would have to be done after all the pre-cut and pre-fitting and machining would be done.

Trial Examiner: But it still would all be done before the door arrived on the job site?

The Witness: Yes, sir.

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39 Mr. Goldstein: That is objected to. I don't think we ought to track up the record with what he was told. May I make a suggestion to solve this?

I will stipulate that specifications normally are
40 arrived at by consultation between the architect and the owner, resulting in an agreement on what the owner is satisfied with. For haven's sake, we don't need certain witnesses for that.

Trial Examiner: All right.

Q. (By Mr. Hannon) Again, we have an outstanding question as to what was the reason for using this type of door on this job.

Mr. Goldstein: That has been objected to because it is immaterial and irrelevant.

Trial Examiner: I will let him answer. Do you know?

The Witness: Yes; the architect in this case, a firm that I work for, had been using pre-fit doors and pre-finished doors in a great many projects.

In this particular instance, the owner agreed to the design philosophy and this job went out with pre-finished, pre-fit doors.

Q. (By Mr. Hannon) In the design philosophy that is

established at your place of employment, how would it be applied in this particular situation?

Mr. Goldstein: That is objected to. I haven't the least notion what that question might mean.

Trial Examiner: Do you know what the question means?

The Witness: Yes. As an architect, I believe that the door that is pre-finished and pre-cut and machined at a factory will generally enhance the job as far as the
41 time schedule, plus an aesthetic reason, and possibly with no reflection on local carpentry ability. Conditions at the factory sometimes make it less expensive, plus time-consuming, as far as being done at the same time than other work may be accomplished on the job site; and from all things that an architect is looking for, aesthetics, cost, and workmanship, the doors apparently are much better than being done in another manner.

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Cross-examination

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44 Q. (By Mr. Goldstein) Under pre-fit, for alongside of prefit and an addition to prefit, in any event, what you meant was not only the door was to be pre-fit by having its long edges beveled so that the door would fit into the jamb, but it was also to be mortised out and routed out for hardware; is that right?

A. Yes.

Q. And that that work was to be done at the mill?

A. Yes.

Q. How many doors were there all together on this job?

A. Approximately?

Q. Yes.

45 A. There were two buildings. The total amount of doors is somewhere in the neighborhood of about

175. You must understand that we have hollow metal doors to be on the job.

Q. But wood doors, 175?

A. Approximately; that is only a recollection.

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51 WALTON H. NASON, JR. a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your name, please.

A. Walton H. Nason, Jr.

Q. With whom are you affiliated, Mr. Nason?

A. Nason and Cullen, Inc., General Contractors.

Q. What is your title, if any, with that company?

A. Vice-president.

Q. How long have you been associated with Nason & Cullen?

A. Approximately 16 years.

Q. In what work is Nason & Cullen engaged in?

A. They are general building contractors.

* * * * * * *

53 Q. (By Mr. Hannon) Mr. Nason, how does your company go about acquiring such contracts?

54 A. In this case we were one of a selected group of bidders. We took out plans and bid the job as based upon the plans and specifications and were low bidder.

Q. These bids, then, were based upon the specifications?

A. Yes, sir.

Q. How did your company acquire the millwork, including the doors for this job?

A. We contracted for the millwork, which includes the doors with T. W. Hammonds of Bryn Mawr. They are a millwork company.

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Testimony of Walton H. Nason, Jr.

Q. (By Mr. Hannon) Where were these doors manufactured?

Mr. Goldstein: That is objected to.

Trial Examiner: Answer if you know.

The Witness: The Oxford Plastics Company, Oxford, Pennsylvania.

Q. (By Mr. Hannon) How many of these doors were delivered to the job?

A. Approximately 170.

Q. And when were they delivered to the job?

A. In the latter part of May of this year. And also they came in the first part of June. They didn't all come in at once.

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Mr. Goldstein: Let's not waste time. I am ready to stipulate that the carpenters employed by Nason & Cullen, Inc. were represented by the Metropolitan District Council of Philadelphia and vicinity of the United Brotherhood of Carpenters and Joiners of America, ALF-CIO.

* * * * * * * *

Q. (By Mr. Hannon) Again, in relation to these Ambas-a-dor(s), Mr. Nason, did you at the time have any conversations with any carpenter union officials about these doors?

A. We had several conversations.

Q. When was the first one?

A. In the latter part of May in 1963.

Q. Where did it take place?

A. At the St. Aloysius site.

Q. Who was the conversation with?

A. Charles Boyer, who is the business agent for the carpenters.

Q. What was the conversation?

A. It was brief, but at that time, Mr. Boyer said that his carpenters would not hang these doors.

Q. Were these doors then on the job site?

A. *Some of them, but not all.*

Trial Examiner: Did you make a reply?

The Witness: Yes. I was in a conversation with the owner and the architest at the time and I said that I would like to discuss it with him at a future date. We weren't ready to hang them at the particular time, but we were closing fast on it.

Q. (By Mr. Hannon) Was there any further conversation with Mr. Boyer, then?

A. Not that day, as I recall.

Q. Did you have any conversation after that date with Mr. Boyer?

A. Yes.

Q. What was that conversation?

A. I had a telephone call conversation with him. I also had indirect conversations with him through my men.

Q. What was the direct conversation with Mr. Boyer?

A. I asked him, particularly—

Trial Examiner: Is this the telephone conversation?

The Witness: Yes.

Trial Examiner: Who called whom?

The Witness: I called Mr. Boyer.

63 Trial Examiner: When was this?

The Witness: Approximately a week and a half to two weeks after our first conversations. I would say it was about the middle of June.

Q. (By Mr. Hannon) What was the conversation?

A. I asked if a disposition had been made relative to these doors by his union and whether they would hang them because this was going to go back to his District Council and they were going to take the matter up again. He said at that time "No, we cannot hang them."

Q. Was there anything further said in the discussion?

A. Well, the discussion was about a five-minute discussion. That was the essence of it, but I don't recall, par-

ticularly, what the rest of the conversation was about. It hinged around hanging these doors.

Q. Was there any reason given why they couldn't hang the doors?

A. Yes, the reason was that there is and has been an agreement between the General Building Contractors Association and the Carpenters Union and the carpenters refused to handle these doors.

Trial Examiner: That is what he told you?

The Witness: Yes, sir.

Trial Examiner: Was the work stage at that time such as requiring the work to be required on the hanging of the doors?

64 The Witness: About that time we could have hung them. We were about ready to hang them, particularly the exterior doors.

Q. (By Mr. Hannon) Who was the company's union steward on the job?

A. Mr. Jessie Coleson.

Q. Did you have any conversation with Mr. Coleson about these doors?

A. Yes.

Q. When did that conversation take place?

A. It was in that two-week period between the time that I first talked to Mr. Boyer and the telephone conversation. Then, I had a later conversation with Mr. Coleson.

Trial Examiner: Take one at a time.

Q. (By Mr. Hannon) What was the first conversation with Mr. Coleson?

A. Both of them.

Q. The first one?

A. The first and the second, but I will say both were directing Mr. Coleson—

Mr. Goldstein: I object.

Trial Examiner: Were you the only one that had the conversation?

The Witness: Yes, sir. I was directing Mr. Coleson—

Trial Examiner: What did you say?

65 The Witness: I said, "Would you please hang the doors?". It might not have been so gentle, but I asked him to hang the doors.

Trial Examiner: If you remember your exact words, I would prefer to have them.

The Witness: I don't but that was the essence of it.

Q. (By Mr. Hannon) What did he say?

A. He said as of that particular period he had been directed not to hang them and, therefore, could not ask the men to hang them. I asked him again to call his business agent and see if a further disposition had been made. This was the same conversation. He did so and he was unable to get ahold of Mr. Boyer at that particular time, but at a later time in that day or the following morning, I believe it was, he was able to get ahold of Mr. Boyer and the same disposition existed. They would not hang the doors.

Trial Examiner: After he got ahold of him, what did he say? Did he say he talked to Boyer?

The Witness: Yes, sir.

Trial Examiner: What else?

The Witness: He said, "We can still not hang the doors."

Q. (By Mr. Hannon) Did he or did he not say who directed him not to hang the doors?

Mr. Goldstein: Objected to; how much leading do you want?

Trial Examiner: I will overrule the objection. Do

66 you recall the question?

The Witness: Yes, I thought you were sustaining. Yes; he said Mr. Boyer had directed him not to hang the doors.

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Cross-examination

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67 Q. (By Mr. Goldstein) On page 95, Mr. Nason, you were testifying about your first conversation with Mr. Boyer. And you made this statement: "Well, Mr. Boyer, the representative for the carpenters in our area called me aside and told me that he understood that we had pre-fit doors and that the union would not hang them." Is that right?

A. Right.

Q. Because they were pre-fit?

A. Yes, sir.

Q. The question next was, "He said the union would refuse to hang them?" And your answer was, "Yes, to hang the pre-fit doors."

A. That is right.

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68 Q. (By Mr. Goldstein) Now, on page 96, you made this statement: "I called him on the phone maybe a week and a half or so later to find out the disposition of this particular job and the doors themselves."

"Question: What was your conversation at that time?

"Answer: At that time he told me that the carpenters' union had—would not at that time hang the doors under the agreement, Rule 17 of the agreement, between the General Building Contractors Association and the United Brotherhood of Carpenters, or whatever it is called."

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69 Q. (By Mr. Goldstein) I better go over that answer again. The question was: "Did he state what his objection was?" "Answer: That hanging these doors would be a violation of the contract between the General Contractor's Association and the carpenter union, that they were pre-fit doors.

"Question: Is that the word he used, 'pre-fit'?

"Answer: Pre-fit."

* * * * * * * *

70 Q. Now, on page 113 of that transcript, Mr. Nason, following that, when they were cross-examining you, they asked you this question;

"Question: Now, when Mr. Boyer spoke to you on the telephone about a week and a half after May 31, Mr. Nason, can you recall what the rule that he read to you said? Did it deal with union labels or did it deal with cutting out and fitting doors?

"Answer: No, he didn't read the section of the rule that refers to not handling non-union work. He only read the section that had to do with pre-fitting."

You now remember that testimony, do you not?

A. (No comment).

Q. And does that—

Trial Examiner: Answer the questions audibly; the reporter can't hear you.

The Witness: Yes.

Q. (By Mr. Goldstein) Is that testimony an accurate reproduction of what happened?

A. As I recall, yes, sir.

Q. Let me read to you from page 103 and page

71 104 of the transcript. You were then under direct examination. Mr. Leventhal asked you: "Will you tell us what your conversation was with the steward?"

"Answer: Mr. Cullinson is the steward representing the union. I asked him if, at that particular time, there was a decision as to whether the carpenters would or would not hang the doors. He said at that particular moment that he wasn't sure. He would call Mr. Boyer and find out, which he did, at that time I wasn't on the job when he made the call and he wasn't able to contact Mr. Boyer. So, a day later, he told me that Mr. Boyer again reiterated the position that the carpenters would again refuse to hang—had again refused to hang the doors and would continue to. That is the way it stands as of today."

Now, does that refresh your recollection as to the testimony given respecting your testimony with Mr. Cullinson?

A. Yes, sir.

Q. Did you give that testimony?

A. Yes, sir. Now?

Q. No, no, at the hearing before Judge Grimm?

A. Yes, sir.

Q. And was that testimony an accurate summary of what happened between you and Mr. Cullinson?

A. Yes, as I recall.

* * * * * * * *

78 A. You note in the first paragraph as per plans and specifications, it says, "In accordance with the plans and specifications and addenda dated March 26,—". Now, since the plans and specifications have been—

Q. March 26 of what year?

A. 1962.

Q. Go on.

A. Now, since the specifications call for Oxford Plastic Products to make this door, then we follow the specification, 2186—

18-16-A-1.

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79 DANIEL C. McDONNELL, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your name, please.

A. Daniel C. McDonnell.

Q. Where are you employed?

80 A. John J. McDonnell, Inc.

Q. In what capacity?

A. I am the Treasurer of the company.

Q. What is the nature of the business of McDonnell?

A. We are general contractors.

* * * * * * * *

Q. (By Mr. Hannon) I show you what has been marked for identification as General Counsel Exhibit No. 8 and ask you to identify that.

A. That is a copy of our General Construction agreement with the West Chester area joint school authority for the construction of North Junior High School.

* * * * * * * * *

83 Q. (By Mr. Hannon) Mr. McDonnell, what was or how was this contract relationship established?

A. We were low bidder on the plans and specifications that were made available to the trade, generally. On the basis of our low bid, we were awarded the general contract and subsequently entered into the contractual agreement with the authority.

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86 Q. (By Mr. Hannon) Who supplied the millwork that was supplied in that specification?

A. It was supplied by John A. Yohn Co. of Ardmore, Pennsylvania.

* * * * * * * * *

Q. (By Mr. Hannon) I will ask you, Mr. McDonnell, to identify that which has been marked General Counsel Exhibit No. 10.

A. This is a copy of our subcontract agreement with John A. Yohn Co. of Ardmore, Pennsylvania for supplying millwork on the North Junior High School.

* * * * * * * * *

88 Q. (By Mr. Hannon) How was this agreement with Yohn arrived at?

A. During the time when we were preparing our bid for the owner, we received prices from prespective subcontractors and material suppliers. On the basis of
89 this, we submitted our price. Subsequent to our being awarded the general contract, we discussed and negotiated with several prospective millwork suppliers about

the possibility of providing the millwork. Yohn, eventually, was the successful subcontractor to us, the bidder, to us.

Q. How many doors were involved in this?

A. There were about 235 to 250 doors involved.

* * * * * * * *

Trial Examiner: Can you tell us whether you could authorize any work to be done on the doors on the job other than being hung?

The Witness: No.

Trial Examiner: No what? You can't tell us?

90 The Witness: Normally, we are not authorized to deviate at all from the specifications as drawn by the architect.

Mr. Goldstein: I move that that be stricken.

Trial Examiner: I am asking him about this specific job, North Junior High School. Not normally, but this specific high school job?

The Witness: We had no control over it.

Mr. Goldstein: I move that it be stricken.

Trial Examiner: I will deny your motion.

You are stating that so far as you are concerned, you had no control to what?

The Witness: No control over the type of doors or the way in which they were to be handled on the job. As far as we were concerned on this job, this was a matter that was settled once and for all in the specifications.

Mr. Goldstein: I move the answer be stricken for reasons that I have given.

Trial Examiner: I will deny the motion.

Q. (By Mr. Hannon) When did these doors arrive at the job?

A. They began arriving on the job around the 13th of May of this year, 1963.

Q. What union label, if any, was on these doors?

A. On those doors, there was the label of the Brotherhood of Carpenters and Joiners of America, a typical union label as far as we are concerned.

91 Q. As general contractor, did you employ carpenters at that job?

A. Yes, sir.

Q. Who was the bargaining agent for those carpenters?

A. The Council.

Trial Examiner: The Metropolitan District Council?

The Witness: Yes, on the one hand as the bargaining agent for the carpenters.

Q. (By Mr. Hannon) What did you do with the doors once they got to the job?

A. They were stored for a short period of time and then we began to hang the doors.

Q. How many did you hang?

A. About 15, I would say.

Q. What happened then?

A. Then, I received a phone call while I was in the office one afternoon from a Mr. Boyer, who was the BA for that area, the Carpenter's Business Agent for that area.

Q. What date was this?

A. This was, as I recall, Thursday, the 23 of May.

Q. What did Mr. Boyer say to you?

A. Mr. Boyer said that the carpenters would not be permitted to handle our doors because they were in violation of Rule 17. I asked them then what we were to do if the carpenters could not handle the doors and he suggested

92 that I get in touch with Mr. Gray at the Council headquarters, for further particulars.

Q. Who is Mr. Gray?

A. As I understand it, he is the head man of the carpenters union.

Q. What did you do then?

A. I telephoned Mr. Gray.

Trial Examiner: The same day?

The Witness: Yes, immediately. It was five minutes afterwards, and I told him that Mr. Boyer had told me that the carpenters were refusing to handle the doors because they are in violation of Rule 17.

Mr. Gray said that that was correct and that they were refusing because Rule 17 was being violated. I told him that we were caught in something of a bind because we had an obligation, a contractual obligation with the school authority to provide the doors as specified and the doors that we proposed to install were exactly those that were specified by the architect. He suggested when I asked him what we were going to do, that there is a possibility of timing a carpenter on a blank door. That is one which had not been worked on at all and that this, then, would become the standard for each door that was being hung.

I, of course, suggested that this would involve, I presumed, additional money for us and we were under a fixed-price contract. He said that as far as he was con-
93 cerned, he didn't care who paid the money, whether it was us, the contractors, or the architect or the owner. On that basis, we terminated the conversation.

Q. What happened after that?

A. After that I had no more conversation with either Mr. Boyer or Mr. Gray, but at the time we were employing 14 carpenters on the job and the work that was laid out for the next week or two was largely that of hanging these doors, so the next day we had to lay off about 7 of those 14 carpenters.

Trial Examiner: Why?

The Witness: Because there was no work for them beyond hanging the doors.

Trial Examiner: They wouldn't hang the doors?

The Witness: They wouldn't hang the doors, no.

Mr. Hannon: I have no further questions.

Trial Examiner: I have just one question. Did you do what Mr. Gray suggested you do?

The Witness: The timing?

Trial Examiner: You phrased it a blank door.

The Witness: No, sir. We didn't.

* * * * * * *

94 Q. (By Mr. Goldstein) And then, if I understand you, he meant if you would pay his carpenters so much money for every door hung, namely, an amount of money equal to the time amount it would have taken to hang all the doors they would hang them and didn't care who paid?

A. That is my understanding of what Mr. Gray proposed.

Q. And you didn't want to do that?

A. No, we didn't.

* * * * * * * *

97 Q. And from your familiarity with the specifications on other jobs, how many of those jobs in their specifications call for pre-cut and pre-fitted millwork?

* * * * * * * *

The Witness: As far as I know, we have had doors that, in effect, were pre-cut before.

Q. (By Mr. Goldstein) You have had lots of doors that, in actuality, were not pre-cut?

A. We have had both, yes.

Q. When the doors are not pre-cut, who does the cutting where?

A. If the doors are not pre-cut, the carpenters
98 would do the cutting in the field.

Q. That is, the carpenters, the outside carpenters, the construction carpenters?

A. That is right.

* * * * * * * *

99 Q. (By Mr. Goldstein) At the time of your conversation with Mr. Gray, how many of the doors had arrived on the job site?

100 A. At that time, I believe that all the doors had then arrived on the job site.

* * * * * * * *

Trial Examiner: Did they hang the doors?

Mr. Goldstein: No, they didn't hang the doors.

Trial Examiner: Did they?

The Witness: No, they continued to do other types of carpentry, but they refused to hang the doors.

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101 Q. (By Mr. Goldstein) Now, insofar as the work on the site is concerned, suppose that these pre-fitted doors didn't fit into the jamb or didn't fit the hardware. What right if any, do you think you had, what control, if any, do you think you had over that?

A. What do you mean, what control did we have.

Q. You used the word control. Now, you tell us what you meant. I am using your word.

A. When we were talking about the word "control", I meant that we had no control over the specification for the doors.

Q. You didn't have to take this contract, did you, which is General Counsel Exhibit No. 9, no one was forcing you to contract with the school authority?

A. There was competitive pressure, yes. If we wanted to stay in business, yes, we do have to take what is available.

• • • • • • • • •

104 Q. Now, let's get back to these doors on the job site. Did you have sufficient control over the doors and their hanging to do something about it if they didn't fit?

105 A. If they did not fit as they came on the job, the architect would not accept them. He is the one who has control of the acceptability or the non-acceptability. If they didn't fit he would direct us to make them fit.

Q. In other words, your superintendent or foreman would determine whether they would fit or wouldn't fit?

A. Normally, he would see.

Q. What would he do if they didn't fit?

A. He'd probably discuss the matter with the clerks or the architects representatives on the job.

* * * * * * * *

106 Q. * * * Where you have a sufficiently large products so as to require 245 or 250 doors?

A. Whole doors?

Q. Are the doors themselves even manufactured on the job site? I mean when you have as many as 235 or 250 doors?

A. Not on any of our jobs.

Q. You are familiar with what the industry does. You talked about what the competition does. Do they build 235 or 250 doors on the job site?

A. Normally, they wouldn't do it on a school job.

Q. They would buy the doors from the mill or through a supplier or directly, wouldn't they?

A. We do.

Q. You do, and what about your competitors?

Trial Examiner: So far as you know.

The Witness: I am quite certain that they do.

Q. (By Mr. Goldstein) Now, did you specify to Yohn Company from what mill it was to be obtained in your contract?

A. No, our only requirement of Yohn was that the mill work that they provide was to meet the specifications and the approval of * * *

107 Q. Do you know from whom he did obtain these doors?

A. He obtained them from a door company in Wisconsin whose name slips me for the moment.

Q. Let me see if I can help you out on that. Is it the Hardwood Products Corporation?

A. Hardwood Products Corporation, yes.

* * * * * * * *

109 Q. Now, you stated that on May 23, Mr. Boyer said to you that the carpenters wouldn't be permitted

to handle the doors because they are in violation of Rule 17, is that right?

A. That is right.

A. That is right.

Q. Did he say to you that he was telling the carpenters not to put up the doors?

A. He said that he was telling them that afternoon.

Q. What?

A. That they could not handle the doors.

Q. Do you know whether he did tell them? Did you hear them tell him?

A. No, I did not.

* * * * * * * *

111 Redirect Examination

Q. (By Mr. Hannon) On cross-examination, you mentioned that your company in the past has hung pre-
112 cut doors on other jobs. On what jobs have they hung pre-cut doors?

A. Well, for example, it is not unusual for us to have a door come on the job that has been cut out for a louvre or a door to come on the job that is cut out for a pain glass. This would be with the glazing feeds just tacked in loose. One job that comes to my mind immediately is Queen of the Universe School, in Levittown, Pennsylvania, in Bucks County.

Q. How many doors were involved in that job?

A. In that job, I would say there were in the neighborhood of two dozen doors involved that had been cut out for glass, for vision panel.

Q. Do you have recollection of any other jobs in which similar type work was done?

A. Yes, on the Mill Creek Housing Project.

Mr. Goldstein: Where is that?

The Witness: It is at 46th and Aspen Streets, in Philadelphia.

It is a Federally-assisted low-grant housing project. We did receive some doors which were hung by the carpenters that had been pre-cut for glass or for louvres.

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113 Q. Again, referring to cross-examination when you were discussing the alternative that was given you by Mr. Gray, that is, the cutting of a blank door on the job, as I understood the question, it referred to work that was not going to be done. Is that correct?

A. That is correct. The one blank door would be cut completely on the job and whatever length of time this took, it would be converted at scale to so many dollars and cents per door and for each of the pre-cut doors we were to hang after that, we were to pay this specified amount of dollars and cents no matter how long it took the carpeneter to hang the particular door.

* * * * * * * *

120 Q. (By Mr. Goldstein) Did you ever, prior to your company's taking the job and while you were still in the pre-biding, discuss with the Metropolitan District Council any question that might have been raised by the presence of working Rule 17, in particular, the
121 second sentence of it in your collective bargaining agreement and the presence in the specifications of the requirement that the doors be pre-fitted?

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A. That is because the pre-fitting or pre-hanging of the doors created no question in our minds, because, briefly, as I mentioned yesterday, we had received doors on the job which had been cut out for glass or which had been worked at the mill for louvres.

Q. And you interpreted the glass and louvres to be the same thing as bellowing the ends of the doors, mortising them for the hardware, routing them for the hinges. Is that it?

A. Well, work had been done on them in the factory in either case.

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123 Trial Examiner: Did they tell you why they wouldn't install them?

The Witness: Yes, because they said it was in violation of Rule 17. Mr. Gray said there was just too much of this thing going on.

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125 Q. Did you make the following statement immediately after the sentence I have just read, "He said that this was helping the inside carpenters at the expense of the outside carpenters."

A. Yes, he did.

Q. He did?

A. Yes.

Q. So that you knew the respects he stated in which he felt your company was violating Rule 17, namely, by use of precut doors, is that right?

A. That is right.

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126 Q. I show you page 87 of those specifications, 7-6, and I ask you to look at the "Fitting and Hanging" marked 8-48.

Will you read that?

A. As it was originally written: "Fitting and hanging—Section 8-48, Contractor shall do all fitting and hanging of exterior wood doors and hanging of interior wood doors. All doors accurately fitted with clearance of 1/16th inch at the head and jambs and 3/16ths inch at the bottom, unless otherwise noted."

Now, who made the pencilled markings on that, do you know?

A. No, I don't know who made those.

Q. Do you—

127 Trial Examiner: Do you know whether that was the final specification or whether it was changed as marked?

A. May I have a copy of Bulletin No. 1?

Mr. Goldstein: Here you are.

The Witness: Bulletin No. 1 is paragraph 8-48 and was changed to read, "Change heading above this paragraph from 'Fitting' and Hanging to 'Hanging'."

So, this change here is erroneous. It is the fitting that should have been crossed out.

Trial Examiner: It was changed to be entitled "Hanging"?

The Witness: That is right.

Then, further omit the word "Fitting" from the first line of paragraph 4-48.

Trial Examiner: So that the first line would read?

The Witness: It would read, "Contractor shall do all hanging of exterior wood doors and hanging of interior wood doors."

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128 Q. (By Mr. Hannon) Would the doors that ultimately arrived on the job, the doors that were described in General Counsel Exhibit No. 9, that is, the pre-fit doors, ultimately arrive on the job we have been discussing, are those the pre-fit doors that are set out in Subparagraph (g)?

A. Yes, they are.

Mr. Hannon: I have no further questions.

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130 EDWARD C. DRISCOLL a witness called by and on behalf of the general counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) Would you state your name, please?

A. Edward C. Driscoll.

Q. With what company or firm are you affiliated?

A. L. F. Driscoll Company.

Q. What is the nature of the business of that company?

A. General building contractors.

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131 Q. Are you familiar with the construction at the Coatesville Hospital job?

A. Yes, that was my particular project.

Q. What is the Driscoll Company's relation with that job?

A. We were the general contractors with a direct contract with the owners.

Q. Who was the owner?

A. The Coatesville Hospital.

* * * * * * * *

Q. (By Mr. Hannon) What was the total cost of that job?

A. The basic contract was $1,315,000, as I recall and there were change orders amounting to $30,000 odd dollars.

132 Q. Who provided the mill work for that job?

A. Boyertown Plating Mills in Boyertown, Pennsylvania.

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133 Q. (By Mr. Hannon) Mr. Driscoll, how many doors were delivered to the job?

A. Approximately 170.

Q. When did they arrive at the job?

A. May 22, 1963.

Q. To your knowledge, who produced these doors?

A. Hardwood Products Corporation.

Q. Did they bear a union label?

A. Yes, sir.

Q. What union?

A. The United Brotherhood of Carpenters and Joiners, I believe it is called.

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135 Q. (By Mr. Hannon) Mr. Driscoll, at the time, did you have any conversation with any union official about the doors that were used on the Coatesville job?

A. Yes, sir. It was right after they were delivered on May 22, I had a conversation with Mr. Gray inquiring as to why we were not allowed to hang the doors.

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137 Q. (By Mr. Hannon) What did you say to Mr. Gray?

A. I asked Mr. Gray why the carpenters were not allowed to hang the doors. He said we were in violation of Rule 17 in that the doors had been factory-pre-cut and pre-shipped for hardware and cut to size.

He said that they were not allowed to do that. This is a little ahead of that first conversation.

Q. What additional conversations, if any, did you have with the union officials about these doors?

A. I called Mr. Gray back again that afternoon or
138 the following morning, I don't recall which, and I asked him what he suggested we do with the doors already delivered on the job. He pointed out that I could send the doors back or I could pay the carpenters on the job as a bonus for the work that would have had to have been performed to fit these doors and cut these doors for hardware.

Q. What did you say?

A. I told him I would call him.

Q. What happened after that?

A. Well, after various discussions in our office we decided that it was the best way out. We had to dedicate one of these buildings in 10 days and it contained about 100 of these 170 doors. We decided that we would attempt to establish this bonus and if it was not too high, we would go

along with it in the interest of getting the architect and owner happy and let them have their building on time.

Q. What was done?

A. I called Gray again.

Q. When was this?

A. Again on Friday, late in the afternoon. It was about 1 o'clock on Friday. I told him we would go along with the suggestion and we would like to establish the value of this bonus and how we would go about it.

Mr. Gray said we would have a meeting on the job site with Mr. Boyer, the representative, and I could have
139 my carpenters of my own choice, presently employed on the job site, physically cut and hang and fit a door which happened to be delivered on the job site uncut and unfit, one that was delivered in blank, determine how long this took and arrive at a chart which would be the hourly rate of the carpenters.

Q. What happened then?

A. We set up a date to do this, a Monday morning at 9 o'clock and we proceeded to do this on two doors, averaged the time, determined that approximately one hour's work had been done and since the carpenters were something in the neighborhood of $4.25 or $4.50 an hour, when you allow for all the benefits, this was what I would pay the men for each of the pre-fit pre-cut doors.

Q. How many doors would that have been?

A. About 160, as I recall, 150 or 160; I don't remember now.

Q. What happened at that time?

A. I made a verbal agreement with Mr. Boyer to do this, to pay the men this money and he said, "All right. The men may proceed."

The doors were then hung.

Q. Mr. Driscoll, approximately how much time elapsed between the arrival of the doors on the job and the hanging?

A. They were delivered on a Wednesday.

Mr. Goldstein: That is objected to as immaterial.

Trial Examiner: Overruled.

140 The Witness: They were there on a Wednesday, probably in the morning, and we commenced hanging them the following Tuesday.

Trial Examiner: When, so far as you know, in the course of the job, was it necessary to start hanging them, had there been no controversy over the doors?

The Witness: They were already late.

I had been doing a great deal of phone-calling around to get the doors delivered. I had guaranteed a dedication date to the hospital of June 6 and I was pressed for time.

Trial Examiner: Is your answer that the hanging could have started immediately upon their arrival?

The Witness: Yes, we were all set for them.

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Cross-examination

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145 Q. (By Mr. Goldstein) Now again, following up the question you asked, Mr. Trial Examiner, this becomes difficult because I am trying to do one thing and two other things are being done. For how long was the installation of the doors delayed?

A. Approximately five working days.

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146 Q. On the third page, I show you a line which says "So, we had to pay the carpenters to hang the pre-cut doors at regular rates and, then, also pay them
147 a bonus or penalty of one hour's work per door." Did you use the word bonus or penalty to Mr. McClasky?

A. Probably.

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154 Q. Now, in estimating on this job, when you saw that these doors were to be pre-fit and pre-cut, that entered into your calculation of cost, didn't it?

A. Yes, sir.

Q. And did you then look at your collective bargaining agreement to see what it had to say about it?

155 A. Certainly.

Q. Did your company notify the District Council or its representatives that you intended to take a job on which the doors would be pre-cut and pre-fitted?

A. We had just completed a similar job and we had not reason to do that.

The rule has been there in the past and a question has never been raised before.

Q. Well, when was this similar job and where?

A. At the University of Medical Research Building. The doors were hung from approximately January or so of 1963 through the next 3 or 4 months.

Q. How many doors were involved?

A. In the neighborhood of 700.

Trial Examiner: Would those be pre-cut and pre-fitted doors?

The Witness: Yes, sir.

Trial Examiner: They accomplished the hanging?

The Witness: They took them out of packages and put the hardware on them, any surface hardware.

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157 Q. I show you, Mr. Driscoll, the specifications for alterations in addition to the Coatesville hospital at page 10-3. Under the caption, "Hardware" paragraph 10-24, will you read that aloud, please?

A. "Carpentry trade shall install all hardware except for specifically-indicated otherwise. Hardware shall be securely installed in a workmanlike manner with all mortising and cutting neatly and accurately done with hinges rabbited into doors and frames."

Q. Now, those doors are the so-called precut doors, are they?

A. Yes, sir.

Q. Prefit and pre-cut?

A. Yes, sir.

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158 Q. (By Mr. Goldstein) Did you not, either during your conversation with Mr. Gray—tell him that the specifications called for pre-fit and pre-cut doors? Did you?

A. Yes, sir.

Q. You did?

A. Yes.

Q. Did you mention that to Mr. McClasky?

159 A. I don't remember whether I did or not, but I specifically told Mr. Gray that the doors were precut and prefit.

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Trial Examiner: I will sustain the objection. I didn't quite get your answer when you said you specifically remembered telling it to Mr. Gray because I didn't get the rest of it.

The Witness: Because here I was in the position that I was in the position that I was with the owner, a contractual arrangement and I had to put these doors in and my labor supplier was saying he would absolutely not
160 do it. So, I know I specifically told him why they were that way. We were following the specifications.

Q. (By Mr. Goldstein) Was that a more important element in your problem, the fact that you had to follow the specifications?

A. Certainly.

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163 Redirect Examination

Q. (By Mr. Hannon) Mr. Driscoll, on cross-examination, you mentioned that certain work was done on the doors because of minor errors. On the job site, did this work in any way interfere with the finish of the doors?

A. No, sir. It was done, luckily at a spot which would be covered after the hardware was installed.

Q. What other work, if any, had to be done to these doors after they arrived at the job site in addition to these minor corrections?

A. I think nothing besides hanging them.

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164 JOHN F. BROWN a witness called by and on behalf of the General Counsel being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your name, please.

A. John F. Brown.

Q. With whom are you affiliated?

A. L. F. Driscoll Company.

Q. What is your position with Driscoll?

A. Vice-president.

Q. Vice-president?

A. Yes.

Q. What are your duties as vice-president?

A. Administration, expediting and general supervision, not meaning that I visit a job every day, the particular job.

Q. Are you familiar with the Coatesville Hospital job?

A. Not to a very great extent. Mr. Everett Driscoll handled that job himself.

Q. Did you have any conversations with any carpenter officials about any doors to be used on that job?

A. With Mr. Boyer and with Mr. Gray.

Q. When did the first conversation take place?

165 A. The afternoon of May 23.

Q. And with whom was it?

A. Mr. Boyer and later the same day with Mr. Gray.

Q. And where did this conversation with Mr. Boyer take place?

A. Well, I believe he was at our job at Coatesville. I was at our office, and it was a telephone conversation.

Q. Who called whom?

A. I am not sure whether it was our superintendent or Boyer that called me. They were both at the phone together.

Q. What did Mr. Boyer say to you?

A. He said that we had prefit and prefinished doors on the project and the carpenters would not be allowed to hang them as it was a violation of the agreement.

Q. What did you say?

A. I didn't know whether it was or not.

Q. What was said?

Trial Examiner: What was your reply?

The Witness: Nothing, except that he said that the carpenters will not be allowed to hang the doors and I said, "Why not?". He says, "You are in violation of an agreement." As it turned out it is rule 17 and I didn't know it at that time. And I asked him where do we go from here and he said, "I don't know. I just merely have instructions that we are not allowed to hang the doors."

I said, "Suppose we hang the doors anyhow?".

166 He says, "Then the job will be struck."

Q. (By Mr. Hannon) What else, if anything, was said?

A. I said to him if he was the final say in this matter and he said, "No, it could be taken up with Gray."

I called Mr. Gray.

Q. What did you say to Mr. Gray?

A. Substantially the same thing I said to him.

Trial Examiner: Tell us again.

The Witness: I told him I understood the union carpenters had refused to hang our doors. I told him I didn't know whether he knew why or not.

Trial Examiner: Just tell us the conversation.

The Witness: I said that the carpenters refused to hang the doors. Whether he asked me why or not, I don't

know. Anyhow, I told him why they wouldn't hang the doors.

Q. (By Mr. Hannon) What did you tell him?

A. I told him that the carpenters refused to hang the doors.

Trial Examiner: Did you tell him why they refused, or just that they refused.

The Witness: Because they were pre-finished doors. He said, "That is right." He said that no carpenters from now on will hang pre-finished or pre-fit doors.

Q. (By Mr. Hannon) What else, if anything, was said in that conversation?

A. I asked Mr. Gray what he could do with the
167 situation and how he could overcome it. The hospital was hoping to get into the building and we were, apparently at a deadlock and couldn't do anything, so I said, "Where do we go from here?"

Q. What did he say?

A. He said it wasn't his problem.

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Q. (By Mr. Mahin) Mr. Brown, prior to this particular job, had you had any other jobs on which pre-cut or factory-finished doors had been used?

A. Yes, sir.

Q. Will you please tell the Board of those situations and the number of doors approximately involved?

A. The job was Temple Research Laboratory, Temple University, and approximately 700 doors were involved.

Q. On or about what time and what period were those installed?

168 A. I would say, starting approximately the first of February.

Q. What year?

A. 1963. It was to the middle of May, 1963.

Q. By what employees were they installed?

A. Union carpenters.

Trial Examiner: From the Metropolitan District?

The Witness: Yes, sir.

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169 JAMES LAUDERDALE a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your full name, please.

A. James Lauderdale.

Q. Where are you employed?

A. At the Hardwood Products Corporation at Neenah, Wisconsin.

Q. What is the nature of the business of Hardwood products?

A. We manufacture a solid-core hardwood veneered architectured door.

Q. What do you mean architectural?

A. By architectural, we manufacture the doors in accordance with specifications furnished by the architect for a given job.

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170 Q. (By Mr. Hannon) You were referring to the fact that you manufacture doors in accordance with architectural specifications for a given job. I ask you, how do these architectural specifications come to Hardwood?

A. We sell our doors to mill work houses throughout the United States and they send us their purchase order to furnish doors for a given job.

Q. What happens after this order is received at Hardwood Products?

A. It is processed through the office and into our mill and manufactured in accordance with the specifications accompanying the purchase order.

Q. Do you carry a stock door?

A. Not as such. All of our doors, again, are manufactured in accordance with specifications for a church, a school, a hospital, a public office building or a given job.

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174 ROBERT H. GRAY a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your full name, please.

175 A. Robert H. Gray.

Q. With whom are you affiliated?

A. The Metropolitan District Council of Carpenters.

Q. What is your title, if any?

A. I am the secretary-treasurer and business manager.

Q. What are your duties as secretary-treasurer and business manager?

A. My duties are varied as far as secretary-treasurer and business manager are concerned. I have 15 business agents who work under me, directly under me. I have three secretaries in my office. I have an apprentice program to operate and also am on the Board of Administration of the Health and Welfare Plan and on the Board of Administration of the Pension Plan.

My duties are to see that the collective bargaining agreement—among my duties—are to see that the collective bargaining agreement between the General Building Contractors Association and the independent contractors are lived up to.

Q. Mr. Gray, how many locals are affiliated with the Council?

A. 27.

Q. Where are these locals located?

A. They are located within the five-county area, namely, Philadelphia, Bucks, Chester, Delaware, and Montgomery.

Q. Do those locals have offices? I mean by title.

A. Do you mean physical offices?

Q. Officers?

176 A. Yes.

Q. Do they have business agents?

A. No.

Q. Are they entitled to have business agents?

A. There are four of the Locals that are called specialty locals who are entitled to have business agents.

Q. What would be the purpose of the business agents—the duties of the business agents of these locals?

A. I will have to answer that—

Mr. Goldstein: That is objected to. There has been no attempt to show that these four Locals have anything to do with the matters here in issue.

Trial Examiner: This is cross-examination.

Mr. Goldstein: I don't think that it is proper for the General Counsel just to dig into the whole structure of the union, whether it has anything to do with this case or not. I think he should establish the relevance of this.

Trial Examiner: I will overrule your objection.

The Witness: Should I have to answer the question?

Trial Examiner: Answer the question to the best of your ability. You may explain what you mean.

The Witness: To the best of my ability, I know exactly how it operates. These four local unions have to be given expressed permission from the District Council in order to have a business agent. Now, one of the local

177 unions is called Resiliant Floor Local Union, who does nothing but resiliant floors, that is this tile that is on this floor here (indicating). The other is a Wharf and Dock Builders, who have the policing and driving of piles on the waterfront. The other is a Custom Furniture and Drapery Workers. They put up venetian blinds and drapes and that sort of thing. And the other local union is a Millwright Local union. They do nothing but millwright work, and these business agents are elected by the members in that local union. But every business agent, no matter

whether he is a specialty business agent or a district council business agent, comes under the direct supervision of the secretary-treasurer and business manager.

Q. (By Mr. Hannon) What are the business agent's duties?

A. The business agent's duties are to police the job, whether it is a construction job or an alteration job or whatever it might be and to see that the contract is being lived up to.

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180 Trial Examiner: What is the function of these offices?

The Witness: These Locals are more or less to divide up the membership so that they can meet in local union meeting halls and pay their dues and discuss problems that they might have on the job so that their delegates to the District Council can report back to the District Council what goes on so that they can take action.

Mr. Goldstein: Who can take action?

The Witness: The Metropolitan District Council delegates.

Trial Examiner: Do these locals negotiate?

The Witness: No, they never do.

Trial Examiner: Do they deal with an employer with respect to wages, hours or working conditions?

The Witness: No, they do not.

Q. (By Mr. Hannon) Do they handle grievances?

A. No.

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188 MORRIS GREEN a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your full name, please.

A. Morris Green.

Testimony of Morris Green

Q. By whom are you employed?

A. By the Frouge Corporation.

Q. Where is the Frouge Corporation located?

A. Well, in Philadelphia we are located at 20th and Pattison. Our home office is at 141 North Avenue, Bridgeport, Connecticut.

Q. And what is your position with the Frouge Corporation?

A. My position is project manager of the Naval Capehart Housing Project in Philadelphia.

Q. What is the nature of that job?

A. The duties that I perform are coordination of subcontractors and the contractor, the General Contractor, which is Frouge, and I expedite and I handle the receipt of materials so that the job can be completed in quick order.

Q. What, to your knowledge, is the total cost of that job?

A. $6 million.

Q. Who is it being done for?

A. It is being done for the United States Navy. It is housing for naval personnel.

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190 Q. (By Mr. Hannon) When did this job start?

A. It started in the latter part of July, 1962.

Q. And what governed the type of doors that were to be used on that job?

A. Well, the interior doors were the long mahogany doors.

Mr. Goldstein: I object. That isn't the answer to the question. The question was, what governed the type of doors to be used.

The Witness: I am sorry. Our specifications did.

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191 Q. Possibly, for the sake of brevity, I might just have Mr. Green read into the record that part of the specifications that pertains to the doors.

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192 Mr. Hannon: This "Flush Interior Doors."

The Witness: This is paragraph 10-06B.

"Flush Interior Doors." It reads: "Hollow core flush veneer, meeting U. S. commercial standard CS-171. One inch and three-eighths thick, unless otherwise shown with Philippine Mahogony-face veneer for natural finish."

Q. (By Mr. Hannon) About how many doors were to be used on this job, Mr. Green?

A. There were 3,600 of that type of door.

Q. And what discretion, if any, did you have as to what type of door was to be used?

A. Would you repeat that?

Q. What discretion did you have, if any, in choosing the type of door for which would be used on this job?

A. Well, we just had to abide by the specifications of the U. S. commercial standards that they asked us to use.

Q. What decision did the Frouge Corporation make as to what doors were to be used?

A. Well, our decision was made, that was the type of door we had to use. And the doors were bought just as specified and with the stipulation with Baldwin Lumber, who was our supplier, that they would be pre-machined for butts and for locks.

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193 Q. (By Mr. Hannon) I ask you to identify General Counsel's Exhibit No. 17.

A. This is a breakdown that I have from the Baldwin Lumber Company, all of the items they were to supply us with and their contract price.

Q. Does this include the doors on the job?

A. Yes, it does. Here is the interior doors and the preparation of them down here.

Q. This document would only be offered to prove the business relationship that existed between Baldwin and the Frouge Corporation on the ordering of these particular doors.

Mr. Goldstein: In other words, that the Baldwin Company were subcontractors.

Mr. Hannon: Not that they are necessarily subcontractors, but suppliers.

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194 Q. I have subpoenaed any contract between
195 Frouge and the District Council and ask this time if you have such a document?

A. I don't have the document with me. I had a copy of our International Agreement which I lost in the moving of our offices this past week. I can't get another copy for you. The International Agreement, I believe, is dated in 1960.

Q. Do you know the terms of the International Agreement?

A. Well, if I remember correctly, the terms indicate that we are to abide by all local rules and regulations of the area that we work in.

Q. Did you have any conversation with any representatives of the Metropolitan District Council of Carpenters concerning the doors on the job?

A. After we had received our second shipment.

Q. When would that have been?

A. That was in the latter part of May, around the 20th or 25th. Two of the District Council's business representatives called on the job.

Q. Who were they by name?

A. Mr. Goldstein and Kane.

Q. Who did they tell?

A. Mr. Frouge happened to be there at the time. I was present and our general superintendent was present there at the time.

196 Q. Who is Mr. Frouge?

A. The president of the Frouge Corporation, John Frouge.

Q. What was said by them?

A. Well, the subject of the doors was brought up.

Q. Who brought it up?

A. Mr. Kane or Mr. Goldstein, I don't remember.

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Q. (By Mr. Hannon) You were shown a copy of the by-laws?

A. Yes, sir.

Q. I will ask you to identify General Counsel Exhibit No. 14.

A. Yes, sir.

Q. What is it?

A. That is their by-laws and working rules.

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197 Q. (By Mr. Hannon) I show you Rule 17 on page 46 of the contract—of the by-laws and working rules and ask you if that was what was brought to your attention?

A. Yes, Rule 17.

Q. Was it shown to you or was it read to you?

A. It was shown to all of us and it was read by all of us.

Q. What happened following the reading of this rule?

A. Well, Mr. Frouge then took the by-laws and he was going back to Bridgeport, Connecticut and I think he was going to discuss it further with his brother, which is Mr. Thomas Frouge. It turned out as such, since this was the by-laws of the union, they figured there wasn't anything much we could do about it. He had me re-order doors to replace the ones that came in machined.

Q. So what did you do about the reordering?

A. I reordered the exact same number of doors I received which were machined, which amounted to 665 or 668 doors. All of these doors were already varnished and these other doors we had to take back to Bridgeport, Connecticut.

198 Trial Examiner: From whom did you reorder?

The Witness: Well, actually, let me put it this

way. We didn't reorder. We changed our order from being machined to the standard order so that we could continue on working with these doors on our project.

Mr. Goldstein: Through Mohawk?

The Witness: Through Baldwin and Mohawk.

Q. (By Mr. Hannon) Did Mohawk deliver the doors to the site?

A. Yes.

Trial Examiner: What I wanted to know was, did you reorder the doors or change your order with the same company?

The Witness: To whom we gave the original order?

Trial Examiner: Yes.

The Witness: Yes.

Trial Examiner: I thought you said the doors had been delivered?

The Witness: 600 and some odd doors were delivered but we had to have 3,600 doors for this job. So, we had about 3,000 doors coming.

Trial Examiner: You changed the order on the remaining 3,000?

The Witness: The 600 we reordered from the company.

Trial Examiner: What was the other company?

The Witness: It was the Entex Corporation.

199 Q. (By Mr. Hannon) Where are those 600 doors now that you originally—

Mr. Goldstein: That is objected to.

Trial Examiner: I think he said they were shipped to Bridgeport?

The Witness: That is correct.

Q. (By Mr. Hannon) Did these doors shipped in bear a union label?

A. No, sir.

Trial Examiner: You mean the 600?

Mr. Hannon: You mean any of the doors that were shipped in of the 3,600?

The Witness: No, sir, it didn't have a union label.

Mr. Hannon: I have no further questions.

Cross-examination

Q. (By Mr. Goldstein) And all of the doors shipped in without the union labels were blind and and unfitted and were erected by your carpenters, is that right?

A. Absolutely.

Trial Examiner: What work did they perform on them?

The Witness: We set up a shop. We had a warehouse and we set up a shop to put the butts on and make the hole for the locks. We had our production line there and all of these operations were done on the jobsite to the doors that we had ordered as such, as blanks.

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200 Q. You said that it was stipulated with Baldwin that the doors would be cut out at the mill. Was it your corporation that so stipulated?

A. Yes, sir.

Q. Not the Navy Department?

A. No, sir.

Q. Under the specifications, Frouge Corporation
201 could have ordered blank or blind doors, couldn't it?

A. We could have ordered any doors, so long as it conformed to the United States Standards.

Q. Then, I take it you know that certain of the locals working rules that you had identified in this booklet were part of the agreement that was current in this area?

A. Well, after we had the doors we were well aware of it.

Trial Examiner: Do you happen to know why your company, the first time, did not order blind doors and ordered them already finished?

A. Well, as you know, today in construction, everything is production. If we think we could save a step in the field and expedite matters to get things in pre-machine, pre-fit, we will do that, because that speeds up matters in a

project such as ours with a 400-unit and 3600-doors. It would add up.

Trial Examiner: You save money by saving time?

The Witness: That is right.

Q. (By Mr. Goldstein) And on each of these doors, from your knowledge of the operations, how long would it take to route them, mortise them, bevel them and get them off for hanging?

A. By carpenter?

Q. Yes.

A. I think we timed it and got it ready and one door took about 8 minutes.

202 Q. Eight minutes?

A. This is set up on a production line basis. If he had to go out to each door and do it, he would never do it.

Q. By the production line basis you mean in your so-called mill?

A. In our shop. We would have, I guess there were about 20 doors set up at a time.

Q. Now, when it got out for actual fitting, how much more time was required for each door, do you know?

A. No. I couldn't exactly say on that because sometimes the door frame wouldn't be set correctly or there would be some deficiency so it could range anywhere from one minute to 15 minutes.

Some would slide in and some would need some work.

Q. How long have you been in this line of work?

A. I have been in construction now for about 12 years.

Q. And have you had any jobs where you had to install 200 or 300 doors and not use the mill to get them cut and fitted?

A. When you say mill, you mean the supplier or our shop?

Q. The shop.

A. Our shop?

Q. On the site, on the job site.

A. We have had mills set up on the job site.

Q. Are you acquainted with any jobs in which you did not have a mill or a shop set up on the job site where

203 you had 200 or 300 doors to put in?

A. No.

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204 Q. Do you know whether an offer was made by the carpenters to insall the doors that had been pre-cut and pre-fit if you would pay the men for the time it would have taken them to do the cutting and the fitting?

A. Well, we were told that they had time at another job and—

Trial Examiner: You were told by whom?

The Witness: I think it was Mr. Kane that told me that the assessment would be made up from the time that they would set on another job, which I beileve was Driscoll's.

Q. (By Mr. Goldstein) Did he use the word assessment?

A. Yes, or payment for using these doors.

Q. For using?

A. For using these doors that had been premachined or pre-fit because of the work that the carpenters would have lost because of the use of these doors.

Q. In other words, he told you about that—did he make that offer to install those pre-cut and pre-fitted doors on the same terms to your company?

A. No.

Q. He just told you about it?

A. Yes.

Q. Did you ask him why he was telling you about it?

A. No.

205 Q. Did you know why he was talking about it?

A. He was probably telling us that if we wanted to use them, it would cost us that to install these doors.

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Redirect Examination

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Q. (By Mr. Hannon) As far as these doors are concerned is there a great degree of tolerance in the house door as opposed to a door used on a hospital site?

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206 The Witness: The hospital job or school job has less tolerance than a housing job. We have much more tolerance on a housing job.

I mean, they allow you three-eighths of an inch one way or the other, plus or minus on the height of the door, which you would never get on a school or a hospital job.

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207 HARRY R. THOMPSON a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your full name, please.

A. Harry R. Thompson.

Q. Where are you employed, Mr. Thompson?

A. By the Oxford Manufacturing company.

Q. What is your title?

A. General manager.

Q. Are you familiar with the Oxford Plastics Products Company?

A. Yes, I am.

Q. What is that company?

A. That company owns 80 per cent of the machinery in the building that are used by the Oxford Manufacturing Company.

Q. What is your affiliation with that latter company?

A. I am general manager of the entire organization.

Q. What business is Oxford Plastics Engaged in?

A. Primarily the business of furnishing pre-fit, pre-machined plastic laminated doors.

Q. Do these doors have a specific name or names?

A. We use the name Ambas-a-dor.

Q. What other doors if any, do you produce, besides this Ambas-a-dor?

A. We produce no other door.

208 Q. What is your familiarity with this particular door as far as its production is concerned?

A. I am totally familiar with it. I designed the door and I have started this as a project of our company some five years ago.

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Q. (By Mr. Hannon) Mr. Thompson, again, this is merely for illustrative purposes, I am going to ask you whether or not in your opinion this type door could be cut or fit at a job site?

A. Ambas-a-dor could be fit on the job site but it would require special tooling, special training, the application of the formica decorative on the edges would be possible on a job just as much as it would be possible to build an entire door from the components, but it would be impractical.

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209 Q. (By Mr. Hannon) Mr. Thompson, in addition to the reasons that you have already given, are there any other reasons why this door could not be cut or fitted at the job site?

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210 The Witness: The door is furnished laminated on four sides, two faces and two edges. I do not know how an edge could be removed to refit if this were manufactured as a blank to a specific site to meet job conditions without removing the edge and relaminating. Therefore, I do not think it could be done in the field.

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211 Redirect Examination

Q. (By Mr. Hammon) Mr. Thompson, of your
212 knowledge when a door is delivered and doesn't fit on the job site, what happens to those doors?

A. We pick them up in our own tractor trailers and return them to the plant.

Trial Examiner: To your plant? And replace them?

The Witness: That is correct.

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213 RICHARD J. SWOPE a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) State your full name, please.

A. Richard J. Swope.

Q. Where are you employed?

A. Mohawk Flush Doors, Inc.

Q. And where is Mohawk located?

A. Sunbury, Pennsylvania, and South Bend, Indiana.

Q. Where is it incorporated?

A. The state of Indiana.

Q. What is your position with Mohawk?

A. I am the President.

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214 Q. What business is Mohawk engaged in?

A. The manufacture of flush doors, principally along with other millwork items.

Q. Do you produce a pre-fit door?

A. Yes, we do.

Q. What do you mean by pre-fit?

A. That is a door that has been cut to exact dimensions to fit into a given opening period. It may or may not be bevelled.

Q. What proportion of the doors you produce are of this sort?

Mr. Goldstein: May I have a continuing objection to this line of testimony?

Trial Examiner: All right, you have a continuing objection.

Q. (By Mr. Hannon) What proportion of your doors you pre-fit?

A. Approximately 18 to 20 per cent.

Q. What do you mean by pre-machined?

A. Pre-machined is a door that has been prepared to accept the necessary hardware.

Q. About how many of your doors are pre-machined?

A. 8 to 10 per cent.

Q. How many employees do you have in the production end of Mohawk?

A. Approximately 75.

* * * * * * *

215 Q. (By Mr. Hannon) Mr. Swope, to your knowledge, how many of your pre-machined doors have been shipped into the Philadelphia area in the past year or pre-fit doors, excuse me?

Mr. Goldstein: That is objected to.

Trial Examiner: I will let him answer.

The Witness: Well, in excess of 15,000.

Q. (By Mr. Hannon) How many would have been pre-machined?

A. In excess of 3,000.

Trial Examiner: How many were there neither pre-fit nor pre-machined?

The Witness: In Philadelphia?

Trial Examiner: Yes, in other words, that would be what has been called blank or blind?

The Witness: Right, I would estimate 50,000 or 60,000.

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216 CHARLES LO PINTO a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hannon) Will you state your full name, please?

A. Charles Lo Pinto.

Q. Where are you employed, Mr. Lo Pinto?

217 A. The U. S. Plywood Corporation, Philadelphia.

Q. What is your position with U. S. Plywood?

A. I am a door specialist.

Q. What do you mean by a door specialist?

A. I see, accept orders for, process orders, submit instructions to our factory for manufacturing, estimate prices of the doors that we manufacture and sell.

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221 Q. From your review of these records, do you know approximately how many doors, pre-fit doors, have been shipped into the Philadelphia area in the past year?

Mr. Goldstein: I object.

Trial Examiner: Overruled.

The Witness: Yes, I do.

Q. (By Mr. Hannon) How many would that be?

A. I would say in excess of 6000 doors.

Q. From your review of the records, are you able to testify to the shipments with particular job sites?

A. Yes.

Q. Are you in a position to list some of the—

Mr. Goldstein: I have a continuing objection to this.

Trial Examiner: Yes, which I am overruling.

Q. (By Mr. Hannon) Can you testify from your recollection as to specific jobs where such pre-fit doors were sent and the number of doors of those particular jobs?

A. Approximately the number of doors, yes.

222 Q. Would you list some of those, please?

A. McNeil Laboratories, a commercial building in the general area of Valley Forge, about 220 doors.

Q. And who was the contractor on that job?

A. I believe that was Hughes-Foulkrod.

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223 Q. (By Mr. Hannon) After looking at this for the purpose of refreshing your recollection, can you now state the jobs and the number of doors in which pre-fit doors were delivered and the Contractor?

A. I can name the jobs without looking at these.

224 The only trouble I have is associating the name with the job. It was Hughes-Foulkrod on the McNeil Laboratories. We furnished doors for the Temple University Women's Dormitories or Nurses Residence, as it was called. The General Contractor was Stofflet & Tillotson.

Q. How many doors?

A. There were nearly 800 doors on that job.

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226 Q. (By Mr. Goldstein). You are testifying that your company, to your knowledge and belief, in the last year furnished about 12,000 doors not pre-machined in this area?

A. About, yes.

Mr. Goldstein: That is all.

Trial Examiner: About 12,000 blind or blank doors?

The Witness: Yes.

Trial Examiner: All right.

Q. (By Mr. Goldstein) The pre-machined, is that

227 the same as pre-cut, the term; pre-cut is one thing or pre-machined is pre-cut for hardware?

A. Yes, to receive hardware.

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241 ROBERT H. GRAY a witness called by and on behalf of the Respondent, being previously duly sworn, was examined and testified further as follows:

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Direct Examination

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244 Q. (By Mr. Goldstein) Will you be good enough to tell Mr. Libbin why, beginning with 1960, you only enforced the second sentence?

A. Well, beginning in 1960, which was the start of the Landrum-Griffin Act, our attorney, the District Council's attorney, who is M. H. Goldstein, in the early part of 1960, met with me and advised me that he should meet with our stewards and business agents and he did just that. He told them the facts of life about the Landrum-Griffin Act, and he told them that in his opinion the first sentence of Rule 17 could not be enforced. However, the second part—or the second sentence of Rule 17, was, in his opinion, a perfectly legal piece of contract. He also met with them about a year later.

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245 Q. Let's get back to the second sentence of working rule 17. Please tell Mr. Libbin what you have done in the course of your duties as secretary-treasurer and business manager by way of enforcement of the contract, insofar as the second sentence of Rule 17 is concerned.

246 Have you had occasion to enforce it?

A. Oh, sure, several occasions, except on the period that I mentioned, I have, as indicated by these four cases here today, the Driscoll, the McDonnell, the Frouge and the Mason-Cullen job, I have.

* * * * * * * *

251 Q. (By Mr. Goldstein) Let me put a question to you since Mr. Libbin wants to get it as directly as possible. To which employees did you require the Con-

tractors that had collective bargaining agreements with your district council to give the work of fitting and cutting woodwork, millwork?

A. I would require any contractor who had a contract or collective bargaining agreement with the Metro-
252 politan District Council to use the outside construction carpenters, or what has been said here a few times, on the job carpenters, to do the work of pre-cutting and pre-fitting.

Q. Pre-cutting or prefitting or pre-cutting—

A. Cutting or fitting on the job site.

Trial Examiner: When you say outside carpenters, is that the same thing as saying carpenters on the job site?

The Witness: Yes.

Q. (By Mr. Goldstein) Will you tell Mr. Libbin, just how from the second sentence of Rule 17, you arrived at that requirement for the employers that had contracts with you—make reference to the rule now.

A. Rule 17 does say that our members will not handle any millwork coming from a mill that is pre-cut or pre-fit on the job. So, therefore, if the employer wants to get the millwork installed it would have to come on the job, particularly these doors, they would have to come on the job blind or blank doors.

Q. Who would do the work of cutting and prefitting?

Mr. Hammond: I will object to this interpretation.

Trial Examiner: Overruled. Who would do it?

The Witness: The job-site carpenters. Now, if the employer wants to get that job done, he has to have it done by the job-site carpenter or the outside carpenter. Now, it appears to me—

253 Trial Examiner: Better wait for a question.

Q. (By Mr. Goldstein) You can tell me what you want to say later, and if it is material I will bring it out. Let me put another question to you: what is the purpose,

the objective of that requirement that the job-site carpenter shall do the cutting?

A. Well, this work has been done for the past 80 years as I testified yesterday, by the job-site carpenters. It is their work, it is their jurisdiction. If it is done by anybody else it is taking wages away from the outside carpenters that rightfully belong to them and it is giving it to somebody else. It could be anybody that works in the mill, it could be a laborer, but this belongs to the outside or job-site carpenters. That is their work. That is the only thing we are concerned with—that we are getting the work for the people that are outside carpenters. If you take that away from them you are taking a very important part of their wages from them.

I might say that we have in other parts of our contract, articles and paragraphs that give us the same right to take action against any employer if he fails to live up to our agreement. I think that is very important.

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254 Q. (By Mr. Goldstein) You heard the testimony here of Mr. Driscoll that it took the man he selected to cut and fit a door, a blind or blank door, one hour to do so. Did you hear that?

A. Yes, I did.

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Trial Examiner: This man has been doing this work for 30 years. Based on your own experience, have you done that work?

The Witness: I think the testimony by Mr. Driscoll—

Trial Examiner: How long would it take?

The Witness: It would take longer than an hour.

Q. (Mr. Goldstein) What is your present rate per hour?

A. $4.20.

Q. So, 3,600 came to a job site pre-cut and pre-fitted, if they did, they would mean 3600 hours or more of work of

which your job site carpenters would be deprived of, is that right, at $4.20 an hour?

A. That is right.

* * * * * * * * *

255 Q. (By Mr. Goldstein) Did you use the word bonus or penalty or premium in talking to Mr. Driscoll?

A. I can say I never used the word bonus or penalty and never would, because that is taboo in our union. We don't have any bonus or penalty. The only thing we are concerned about is that our men should have got paid for the work that was entitled to them under the agree-
256 ment. If they would have referred to the money they would have been entitled to, there would have been no questions about it. There were only suggestions on my part to help the Driscoll Company and the McDonnell Company in order to get these doors hung. They had made some question about sending them back or something and I said, "Wait a minute, that is not my prerogative to tell you what to do with them. We will hang those doors if you pay our people the money they would have earned if they would have hung those doors before they came on the job site pre-fit and pre-cut." That is the way I put it to them on the telephone.

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264 Q. Did you or your District Council at the time tell any contractor or any contractors, or tell any representative of the General Building Association that your union would not even enforce the second sentence of Working Rule 17 and would permit pre-cut and pre-fitted mill work, including doors to be installed by your members or by the employees represented by your District Council.

A. The answer is definitely no.

Mr. Mahin: I move to strike on the grounds that it was leading.

Trial Examiner: I overrule it.

Q. (By Mr. Goldstein) Did you, to your knowledge, or your District Council or its business agents, to your knowledge, do anything—permit knowingly, the installation of precut, pre-fitted millwork, including doors?

Mr. Hannon: Objection, this is following in a sequence of leading questions here.

Mr. Goldstein: What makes it leading?

Trial Examiner: I will overrule the objection.

The Witness: The answer is no.

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Cross-examination

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Q. (By Mr. Hannon) What are the duties of a steward on a job?

A. The duties of a steward on a job are to see that the jurisdiction of the carpenters is lived up to. In other words, that the carpenters get the work that they are entitled to among other things.

Q. What is he supposed to do if they don't

A. If they are not, he is supposed to contact his foreman and if he doesn't get results there, contact the superintendent. If he does not get results there, he knows to contact a business agent. A business agent goes on the job and if he can't get it straightened out, it is a matter between the General Building Contractors and the Metropolitan District Council and then it will go to the Executive Secretary of the General Building Contractors and the Secretary-Treasurer of the Metropolitan District Council to settle the problem.

Q. You do have stewards on each job where carpenters are employed?

A. Yes, we do.

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Q. (By Mr. Mahin) You testified one reason for that rule is that you want the work for the carpenters,

the outside carpenters, namely, the work of routing and boring and so forth, is that correct?

A. Well, the entire operation.

Q. Now, do you object to metal doors being brought on?

269 A. No, we do not.

Q. Who does it if your carpenters don't do any routing or boring on them—do they?

A. No, they do not.

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Q. (By Mr. Mahin) Do you administer the second sentence of Rule 17 to administer the use of pre-hung doors? Does the second sentence as you administer it in this area, prohibit the use of pre-hung doors?

A. A pre-hung door is the same as a pre-cut or a pre-fit door. We prohibit it under the second sentence of Rule 17.

Q. Exactly, it has to be pre-cut and pre-fit and you put it in the frame in order to be pre-hung?

270 A. Let me explain. I don't know if you are a carpenter or not—I am a carpenter; I am not a lawyer. I know when a door comes on the job and it is a blank, or blind door, and when it does we expect to do all the work of hanging. We don't want anybody to prehang the door for us. We will do it on the job site.

Q. Do I understand you to say that the way you administer this second sentence of Rule 17, that as a home owner in the Philadelphia area, I could not have you install on my home any pre-cut doors or pre-fitted doors?

Mr. Goldstein: Objected to.

Trial Examiner: I will overrule it.

The Witness: I don't know what the question means as a home owner. Do you mean to remodel your house? I have no control over what you do, but our people would not do it if it was brought to my attention. I would tell

them not to do it on your home or the Trial Examiner's home or Mr. Mahin's home or any home.

. . . . . .

Q. (By Mr. Mahin) Under this rule, as a homeowner, if I were having a home built by a contractor, with
271 whom you deal, could I have installed in that home these Oxford-type doors that you testified to yesterday?

A. If I had a collective bargaining agreement with any contractor that might be here, I would expect him to live up to the second part of Rule 17. I wouldn't care if he was building a doghouse or a home for you. I would expect him to live up to that part of the collective bargaining agreement.

Trial Examiner: Under that agreement, could Ambas-a-dors be hung by your carpenters on the job?

The Witness: They could.

Trial Examiner: In other words, you say that they could do the necessary work on the job site even on Ambas-a-dors?

The Witness: Yes, even on Ambas-a-dors. Let me explain. You saw the exhibit they had here and I think it was introduced as evidence.

Mr. Goldstein: No, it was not. Did you mean that little sample of wood?

The Witness: Yes, it is no different than that door or any other blind door. We don't say the carpenters say that that door should be manufactured on the job, that this Formica on the face of each side of the door should be put on at the job site, but what we do say is that the Formica that is on the edges should be left off the edges and brought on the job and the job-site carpenters should
272 fit that door to the opening and then after they fit it to the opening, apply the Formica on the edges, notch out the hinges or rabbit out and mortise out for your lock and fit the door. It can be done just as

easily with those Ambas-a-dors as it can with any other doors. You might have to use a sharper tool in order to cut through your Formica, but I know I have done the work myself.

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275 Redirect Examination

Q. (By Mr. Goldstein) Maybe I can refresh your recollection. A housing job was—was it in East Wick?

A. Yes.

Q. Does that recall anything to your mind?

A. Yes, it does.

Q. Tell us about it.

A. The doors are still not being hung out there. They had pre-fit, pre-cut doors and they still are not hung.

Q. Let me ask you—do you know what mill made those pre-cut, pre-fit, pre-hung doors?

A. Yes.

Q. What is the name of it?

A. Lumber & Mill Work.

Q. Do you know whether that company, Lumber & Mill Work, has a collective bargaining agreement with any union?

A. Yes, with the Metropolitan District Council.

Q. And yet, you refused to let the carpenters hang the doors because they were pre-cut and pre-fit?

A. Yes, sir.

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277 Mr. Hannon: Of course, it is understood that this is the particular by-laws that were on the Frouge job?

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284 Trial Examiner: If you didn't want to pay the extra money, what could he do at the point where Mr. Gray called upon him and told him "my men will not hang these doors." What could he have done?

Mr. Goldstein: He could have voluntarily offered to the District Council precisely the type and the measure of

damage that is universally imposed in cases of this sort by arbitrators and by courts, namely, "I am sorry. I violated the agreement." You don't want to sacrifice the earnings represented by working time, which I have taken away from the employees represented by your District Council, that is fine—how much working time I have deprived them of, I will pay it to them, and that, by the way is precisely the proposal Mr. Gray also made.

Trial Examiner: Suppose they didn't want to pay the extra money, what could they do?

Mr. Goldstein: If they didn't want to pay the extra money, they just couldn't get the doors hung by the employees represented by us. Now, there are other possibilities. They would have called in laborers or electricians to hang the doors. There is a provision in the contract which says that where there is a jurisdictional dispute among crafts, certain procedures shall be followed:

Now, I don't know that laborers would have hung the doors. I don't know that electricians would have hung them. There is a third thing they would have done
285 or could have done. If you will look at the union security clause in the contract, it does not require any carpenter new to the work in this five-county area who has not been employed by a contractor who is a party to the contract creating the bargaining unit to join the union until he has been employed for at least 7 days or 8 days—I forget which it is. The Contractor could have hired non-union carpenters for a 7-day period and shuffled them around at the end of every seven day period.

Do you think that would have been proper? No, and we fought like wild beasts to prevent that kind of violation of the letter. And it appears to me, Mr. Libbin, that it doesn't matter a hoot in hell that the contractor could not have had an employee hang these doors if he violated the agreement and if he refused to make the adjustment in the form of restitution of moneys lost which is a violation caused.

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291 Mr. Goldstein: I have in my notes to tell you how it gets that way. If you will look at Rule 17 there has been some talk by the General Counsel, talk which I cannot believe was the result of a good faith, serious workmanlike analysis of the second sentence of Rule 17, but there is some ambiguity in it. And it isn't clear that it is an assignment of a work provision. Look at it with me. Do you have a copy?

Trial Examiner: I have a copy written out.

Mr. Goldstein: Reading from the second sentence, "No member of this District Council will handle material coming from a mill where cutting and fitting has been done prior to being furnished on the job."

What does that mean: If the job site carpenters won't handle mill work which has been cut and fitted prior to being furnished on the job, that means that the rule requires that millwork come to the job uncut and unfit. If it comes to the job uncut and unfitted, who, under
292 Article 2 of our contract, is going to do that work?

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GENERAL COUNSEL'S EXHIBIT No. 1-G

ANSWER TO COMPLAINT
(Union Label)

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13.(b) (incorrectly numbered 12(b)). Respondents named in Paragraph 13.(a) above did direct Nason's employees not to install pre-cut and pre-fitted doors, but such directions were withdrawn on or about August 12, 1963, and such pre-cut and pre-fitted doors were thereafter installed by said carpenter employees.

GENERAL COUNSEL'S EXHIBIT No. 2
(Union Label)

COMMERCE.

* * * * * * *

5. During 1962, Hardwood Products Corporation shipped products valued in excess of Two Million Dollars to parties outside the State of Wisconsin. In 1962, Hardwood shipped goods valued in excess of $100,000 to one purchaser in Cleveland, Ohio.

6. In the past 12 months, Oxford Plastics Products Co. shipped to parts outside the Commonwealth of Pennsylvania doors valued in excess of $70,000. During the same period of time Oxford Plastics Products Co. shipped doors valued at:

1. $27,000 to Newark, Delaware
2. $10,000 to Wilmington, Delaware
3. $ 2,000 to Washington, D. C.
4. $ 9,200 to Milford, Delaware
5. $ 3,800 to St. Lawrence University, New York

7. During 1962, Mohawk Flush Doors shipped goods valued in excess of 3½million dollars. During the same period of time Mohawk Flush Doors shipped goods valued at $100,000 to Albany and Buffalo, New York.

GENERAL COUNSEL'S EXHIBIT No. 3
(Union Label)
ST. ALOYSIUS ACADEMY FOR BOYS
Part II—Div. 18
Carpentry and Millwork

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18-16.

EXTERIOR FORMICA COVERED WOOD DOORS.

a. All exterior doors shall be 1¾" thick, heights and vision panels as required by the drawings, formica covered hollow core doors, except as noted otherwise on the drawings. Doors shall be "AMBAS-A-DOR" as manufactured by Oxford Plastic Products Co., Oxford, Pa.

1. Doors for exterior openings #6 and #7 shall be solid wood core formica covered by Oxford Plastic Products.

GENERAL COUNSEL'S EXHIBIT No. 4
(Union Label)
SPECIFICATIONS
FOR
ALTERATIONS AND ADDITIONS
TO
The Coatesville Hospital
Strode Avenue
Coatesville, Pennsylvania
FOR
The Coatesville Hospital
Coatesville, Pennsylvania
PROJECT NO. PENNA. 195

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DOORS, INTERIOR, WOOD

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General Counsel's Exhibit No. 4

10-42. Door Types "B", "C", "D", "F", "G", "H", "J", "L", "N" and "O" shall be of thicknesses, sizes and designs shown; except where designated "B-Label", each shall be of 5-ply solid core construction, flush veneered, glued by hot plate process under pressure; similar to Type "A" door construction described in Architectural Woodwork Institute's "Brochure No. 5", latest edition. Doors shall be "Gold Dowell", manufactured by Roddis Division, Weyerhaeuser Co., "Weldwood Stave Core" manufactured by U. S. Plywood Corp., or "Master-Flush Solid Core" manufactured by Hardwood Products Corp., and shall meet the following requirements:

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(g) Pre-fit: All doors shall be trimmed square and factory pre-fit to size, cut for hardware, with edges beveled as required. Portions of the hardware schedule covering the door hardware and the required templates shall be delivered to the door manufacturer prepaid by the supplier of the finish hardware as early as is possible during the construction period. Swing pairs shall have "V" meeting stiles as indicated on drawings.

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(i) Finishing: Both face s and all four edges of each door shall be completely factory finished by the manufacturer with factory applied sealer, filler and stain, with each door properly sanded and polished, and then given two factory-applied cover coats of clear semi-gloss finish. The resulting finish shall match the sample approved by the Architect-Engineer. Each door shall be individually paper wrapped prior to shipment. Doors which are damaged or doors on which the finish is marred or is otherwise defective, in the opinion of the Architect-Engineer, will be rejected. Note: One face of Doors 3, 19 and 23 (Multi-Purpose Room side) will be painted.

GENERAL COUNSEL'S EXHIBIT No. 7-A

(Union Label)

AGREEMENT

between the

GENERAL BUILDING CONTRACTORS ASSOCIATION, INCORPORATED

and the

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Date Effective: May 1, 1960

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SCHEDULE "C"
WORKING RULES

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SHOP STEWARD

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Rule 17. No employee shall work on any job on which cabinet work, fixtures, millwork, sash, doors, trim or other detailed millwork is used unless the same is Union-made and bears the Union Label of the United Brotherhood of Carpenters and Joiners of America. No member of this District Council will handle material coming from a mill where cutting out and fitting has been done for butts, locks, letter plates, or hardware of any description, nor any doors or transoms which have been fitted prior to being furnished on job, including base, chair, rail, picture moulding, which has been previously fitted. This section to exempt partition work furnished in sections.

GENERAL COUNSEL'S EXHIBIT No. 9
(Union Label)

SPECIFICATIONS
FOR
CONSTRUCTION AND COMPLETION OF
NORTH JUNIOR HIGH SCHOOL
BURKE ROAD, WEST OF ROUTE NO. 100
WEST GOSHEN AND WEST WHITELAND TWPS.
CHESTER COUNTY, PENNSYLVANIA
FOR THE
WEST CHESTER AREA
JOINT SCOOL AUTHORITY
320 NORTH CHURCH STREET
WEST CHESTER, CHESTER COUNTY
PENNSYLVANIA

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(g) Pre-fit: Flush wood doors shall be trimmed square and factory prefit to fit opening size; cut for hardware and edges beveled as required. Portions of the hardware schedule covering the door hardware and the required templates shall be delivered to the door manufacturer prepaid by the supplier of the finish hardware as early as is possible during the construction period.

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(i) Finishing: Both face veneers and all four edges of each door shall be completely factory finished by the manufacturer with factory applied sealer, filler and stain, with each door properly sanded and polished, and then given two factory applied cover coats of clear semi-gloss finish. The resulting finish shall match the sample approved by the Architect-Engineer. Each door shall be individually paper wrapped prior to shipment. Doors which are damaged or doors on which the finish is marred or otherwise defective, in the opinion of the Architect-Engineer, will be rejected.

GENERAL COUNSEL'S EXHIBIT No. 12-A
(Union Label)

AGREEMENT
between
L. F. DRISCOLL CO.
and the
METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

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SCHEDULE "B"
WORKING RULES

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Rule 17. No employee shall work on any job on which cabinet work, fixtures, millwork, sash, doors, trim or other detailed millwork is used unless the same is Union-made and bears the Union Label of the United Brotherhood of Carpenters and Joiners of America. No member of this District Council will handle material coming from a mill where cutting out and fitting has been done for butts, locks, letter plates, or hardware of any description, nor any doors or transoms which have been fitted prior to being furnished on job, including base, chair, rail, picture moulding, which has been previously fitted. This section to exempt partition work furnished in sections.

GENERAL COUNSEL'S EXHIBIT No. 14
(Union Label)

BY-LAWS
and
WORKING RULES
of the
METROPOLITAN DISTRICT COUNCIL
Philadelphia and Vicinity
United Brotherhood of
Carpenters and Joiners
of America
1961

* * * * * * *

RULE 17. No member shall work on any job on which sash, doors, trim and other detail mill work is used unless the same is Union-made and bears the Union Label of the United Brotherhood of Carpenters and Joiners of America. Any member found guilty of violating this section shall be fined not less than One Dollar ($1.00) for each offense at the discretion, however, of this District Council, after due trial and conviction. No member of this district will handle material coming from a mill where cutting out and fitting has been done for butts, locks, letter plates, or hardware of any description, nor any doors or transoms which have been fitted prior to being furnished on the job, including base, chair, rail, picture moulding, which has been previously fitted. This section to exempt partition work furnished in sections, and is not applicable to metal doors, transoms, or to any of the above-mentioned items that bear the label of the Brotherhood.

RESPONDENT'S EXHIBIT No. 6
(Union Label)

AGREEMENT
between the
GENERAL BUILDING CONTRACTORS' ASSOCIATION INCORPORATED
and the
METROPOLITAN DISTRICT COUNCIL
of
PHILADELPHIA AND VICINITY
United Brotherhood of Carpenters and Joiners of America

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May 1, 1957
to
April 30, 1960

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Rule 17. No employee shall work on any job on which cabinet work, fixtures, millwork, sash, doors, trim or other detailed millwork is used unless the same is Union-made and bears the Union Label of the United Brotherhood of Carpenters and Joiners of America. No member of this District Council will handle material coming from a mill where cutting out and fitting has been done for butts, locks, letter plates, or hardware of any description, nor any doors or transoms which have been fitted prior to being furnished on job, including base, chair, rail, picture moulding, which has been previously fitted. This section to exempt partition work furnished in sections.

THE STATUTORY PROVISIONS

Relevant provisions of Section 8(b) of the Act (as amended in 1959) are as follows:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * * *

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

"(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

The Statutory Provisions

Section 8(e) provides:

"(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: Provided, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work, to be done at the site of the construction alteration, painting, or repair of a building, structure, or other work; * * *"

EXCERPTS FROM LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947

(Published by U. S. Printing Office)

Page 428: Senate Report No. 105 on S. 1126

"Section 8(b)(4): In this section it is made an unfair labor practice for a labor organization or its agents—

to engage in, or induce or encourage the employees of any employer to engage in, a strike or a concerted refusal to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services in the course of their employment—

if the purpose is to force the doing of certain things. The proscribed purposes or objectives of a strike or boycott

are described in paragraphs (A), (B), (C), and (D) of this subsection.

"Under paragraph (A) strikes or boycotts, or attempts to induce or encourage such action, are made violations of the act if the purpose is to force an employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of another, or to cease doing business with any other person. Thus, it would not be lawful for a union to engage in a strike against employer A for the purpose of forcing that employer to cease doing business with employer B; nor would it be lawful for a union to boycott employer A because employer A uses or otherwise deals in the goods of or does business with employer B (with whom the union has a dispute). This paragraph also make it an unfair labor practice for a union to engage in the type of secondary boycott that has been conducted in New York City by local No. 3 of the IBEW, whereby electricians have refused to install electrical products of manufacturers employing electricians who are members of some labor organization other than local No. 3. (* * * Allen Bradley Co. v. Local Union No. 3, I. B. E. W., 325 U. S. 797.)"

Pages 1012-1013: 93 Cong. Rec. 3954,
Senator Taft, 4-23-47

"As to the secondary boycott, I shall later describe that type of strike, but I ran into one over the last weekend. The plant of a manufacturer of neon signs in Connecticut, I think in Hartford, or near Hartford, had not been organized, and finally his men were organized by a CIO union. The result was that the A. F. of L. sign hangers' union refused to hang this man's signs before any store. Almost the same type of case occured in Ohio. In Lima, Ohio, a small manufacturer of neon signs was forced out of business because he recognized under the provisions of the act, the union which the National Labor Relations Board compelled him to recognize. Yet he could

not get his signs hung. If the stores were able to get them hung, they were broken by stones. They are particularly vulnerable objects, of course. This man was driven out of business. The man from Hartford told me he had lost $100,000 in the last 3 months, and that he would be bankrupt in another 3 days and out of business, so far as he was concerned. That is an example of the secondary boycott, the A. F. of L. sign hangers' union boycotting an employer using certain material because it was made by a CIO union. Senators have heard of other instances. I cite this one only as a type of that kind of action."

Pages 1055-1056: 93 Cong. Rec. 4255,
Senator Ellender, 4-28-47

"Mr. President, now for a few moments I desire to discuss some of the abuses which labor unions can indulge in with impunity under existing law. Among the most aggravated of those practices are secondary boycotts and jurisdictional strikes. It is true that such practices are not new, but it seems that under the Norris-LaGuardia and Wagner Acts these abuses grew steadily.

"A secondary boycott, as all of us know, is a concerted attempt on the part of a strong union to compel employers to deal with them, even though the employees of that employer desire to be represented by other unions, or not to be represented at all.

"Some of the most glaring examples of the secondary boycott occurred in Ohio, the State of the distinguished Senator in charge of the bill [Mr. Taft]. They affected the neon sign business. Some manufacturers were compelled, under the Wagner Act, to contract with the CIO as the bargaining agent. When neon signs manufactured for distribution all over the United States were shipped to such States as Illinois, Indiana, and Michigan, the AFL unions in those States which had contracts for installing the neon signs, because the neon signs bore the label of the CIO, said, 'We will not put them up.' Of course, trouble fol-

lowed, and losses ensued to the manufacturer. Yet management was, in a measure, compelled to take the steps it did, as it was helpless to do otherwise, as I have just indicated.

"Another example is the New York Electrical Workers Union, the IBEW. That union has become so powerful that it has organized not only those who make the electrical equipment but those who receive it from the factory and install it. As a matter of fact, no employer who manufactures electrical equipment outside of New York has a ghost of a show of having his equipment placed in the large buildings in New York City. When such equipment is sent to New York City, the IBEW local refuses to install it unless it is permitted to tear all the equipment apart and reassemble it again. Of course, one can readily understand that such procedure is unconscionable and that it results in high costs to those engaged in the erection of office buildings, homes, and stores; in fact, all sorts of buildings requiring electrical equipment.

"As another glaring example, I cite the California cannery case of 1946. Sixty canneries in California banded together. They had AFL contracts with both the teamsters and the cannery workers. The CIO threatened to organize the canneries. It petitioned the Board for an election. While the election was pending, AFL teamsters demanded a closed shop as the price of transporting produce from farm to cannery. This was done while the Board had before it the petition by the CIO. The canneries became desperate. Vegetable and fruit was lying in the fields, a good deal of the crop going to waste; fruit growers' losses were heavy. In order to curtail losses, the canneries were forced to enter into a contract with the AFL. Such abuses must be ended, and I shall in a moment endeavor to show how, under the pending bill, that will be accomplished.

"Other recent glaring examples of the secondary boycott are the ones involving longshoremen on the coast of Oregon, Washington, and California. In those instances

CIO workers refused to unload lumber carried in ships manned by AFL seamen. Practices of that sort have caused a great many people to become sour against organized labor. I do not blame them for it.

"An equally grave abuse is the jurisdictional strike, which is the refusal by one union to continue at work, unless certain operations which the employer thinks lie within the terms of a contract with another union are given to the first union. Many examples of the jurisdictional strike could be given, particularly in the building trades. * * *"

Pages 1106, 1107, 93 Cong. Rec. 4322, 4323,
Senator Taft, 4-29-47.

"I do not quite understand the case which the Senator has put. This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees. The Senator will find a great many decisions written by my father which hold that under the common law a secondary boycott is unlawful. Subsequently, under the provisions of the Norris-LaGuardia Act, it became impossible to stop a secondary boycott or any other kind of a strike, no matter how unlawful it may have been at common law. All this provision of the bill does is to reverse the effect of the law as to secondary boycotts. It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice."

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"Take a case in which the employer is getting along perfectly with his employees. They agree on wages. Wages and working conditions are satisfactory to both sides. Someone else says to those employees, We want

you to strike against your employer because he happens to be handling some product which we do not like. We do not think it is made under proper conditions.' Of course if that sort of thing is encouraged there will be hundreds and thousands of strikes in the United States. There is no reason that I can see why we should make it lawful for persons to incite workers to strike when they are perfectly satisfied with their conditions. If their conditions are not satisfactory, then it is perfectly lawful to encourage them to strike. The Senator says they must be encouraged to strike because their employer happens to be doing business with someone the union does not like or with whom it is having trouble or having a strike. On that basis there can be a chain reaction that will tie up the entire United States in a series of sympathetic strikes, if we choose to call them that."

Page 1351: 93 Cong. Rec. 5038,
Senator Ball 5-9-47.

(Speaking for amendment granting private injunctive relief for violation of § 8(b)(4)(A), which amendment was not adopted).

"I thank the Senator, and I agree with him completely. I think the secondary boycott is one of the most vicious abuses of economic power now being indulged in by labor unions. It is being used in some cases to create the tightest kind of little monopolies, and in other cases virtually to dictate the terms on which small businessmen, farmers, and other persons may do business with each other. In the Philadelphia, Baltimore, and New York markets, the farmers hauling their produce are compelled to obey 100 per cent every rule laid down by the teamsters' union, or they cannot do business; and that in supposedly free America."

Page 1354: 93 Cong. Rec. 5040,
Senator Ball, 5-9-47.

"Mr. President, I do not think it is necessary for me to describe the evils of the secondary boycott and juris-

dictional strike. The Senate should be familiar with them by now. As I said before, farm producers and small businesses and their employees are the main victims of secondary boycotts, jurisdictional strikes, and organisational boycotts. It is not the large companies, such as General Motors and General Electric, although they were caught in the monopolistic boycott of the IBEW in New York City, that are the main victims of secondary boycotts and organizational boycotts. It is the small businessmen, usually those with only 50 or 100 employees, who do not have the resources to enable them to last out the 2 to 6 weeks' delay which would intervene before they could possibly get relief under the committee bill. It is such persons and their rights that we are trying to protect."

Pages 1384, 1385: 93 Cong. Rec. 5067, 6068,
Senotor Tydings 5-9-47,

(commenting on a private injunction amendment).

"If it is right for a farmer to take his produce from the Eastern Shore of Maryland or from the Senator's State to New York City without being interrupted by anyone, then it is equally right, if this is a free country, that a manufacturer of any other product should have the privilege of delivering his goods to a customer who has entered into an honest arrangement to buy those goods. I hope the Senator from Vermont will not limit his amendment, or, if it be limited, I hope the limitation will be voted down. We ought to guarantee to everyone in this country who abides by the law the chance to sell the goods he produces without the interference of anyone."

* * * * * * * *

"If there is one thing in America that ought to be protected by this bill it is the right of a man to deliver the fruits of his own labor or business to the customer who wants to buy them, without the interference of anyone else on earth, so long as he abides by the law of this country."

* * * * * * * *

"* * * There is not a man here who does not know in his heart that no one in this world has a right to stop me in the delivery of goods which I produce, so long as I abide by the laws of the several cities, counties, and States of America, and the national laws. We meet the question timidly instead of headon. If we want to pass a labor bill, as my friend from Virginia [Mr. Byrd] said the other day, if the only way to get labor legislation is to elect a Republican administration, here is the place to start. If we are not going to start on the delivery of goods, let us cease all this bunk, because it is merely a sham and a pretense."

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"* * * It does not make any difference whether the crops are perishable or imperishable. The principle is that a man has a right to take his goods down a public highway and deliver them to a customer in an honest, open, and aboveboard manner without the interference of any other person. Years ago the pirates of Tripoli attacked our ships when they were in the Mediterranean Sea. We fought a war with Tripoli so that the Tripolitan pirates would not interrupt the flow of American goods to an honest customer. Now in the United States Senate we are confronted with a case of piracy on the public highway. That is all it is. * * *"

* * * * * * * *

"I believe that the masses of the people of this country can see very little distinction between interrupting commerce on the public highway and going into a man's factory and multilating his property or interfering with the production of anything he may be making inside the factory. It is tweedledee and tweedledum."

Excerpts from
Legislative History of the
Labor-Management Reporting and Disclosure Act of 1959
(Published by the National Labor Relations Board)
Pages 943-944: Conference Report on S-1555, 9-3-59.

The House amendment amends section 8 of the National Labor Relations Act, as amended, by adding at the end thereof a new subsection (e) to make it an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person. The House amendment also makes any such agreement heretofore or hereafter executed unenforcible and void.

The committee of conference adopted the House amendment but added three provisos. The first proviso specifies—

> that nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work.

It should be particularly noted that the proviso relates only and exclusively to the contracting or subcontracting of work to be done at the site of the construction. The proviso does not exempt from section 8(e) agreements relating to supplies or other products or materials shipped or otherwise transported to and delivered on the site of the construction. The committee of conference does not intend that this proviso should be construed so as to change the present state of the law with respect to the validity of this specific type of agreement relating to work to be done at the site of the construction project or to remove the limitations which the present law imposes with respect to such agreements. Picketing to enforce such contracts would be illegal under the Sand Door case (Local 1796, United Brotherhood of Carpenters v. NLRB, 357 U. S. 93,

(1958)). To the extent that such agreements are legal today under section 8(b)(4) of the National Labor Relations Act, as amended, the proviso would prevent such legality from being affected by section 8(e). *The proviso applies only to section 8(e) and therefore leaves unaffected the law developed under section 8(b)(4).* The Denver Building Trades case and the Moore Drydock cases would remain in full force and effect. The proviso is not intended to limit, change, or modify the present state of the law with respect to picketing at the site of a construction project. Restrictions and limitations imposed upon such picketing under present law as interpreted, for example, in the U. S. Supreme Court decision in the Denver Building Trades case would remain in full force and effect. It is not intended that the proviso change the existing law with respect to judicial enforcement of these contracts or with respect to the legality of a strike to obtain such a contract. (Emphasis added.)

Page 1443: Senator Kennedy, 9-3-59.

The first proviso under new section 8(e) of the National Labor Relations Act is intended to preserve the present state of the law with respect to picketing at the site of a construction project and with respect to the validity of agreements relating to the contracting of work to be done at the site of a construction project.

This proviso affects only section 8(e) and therefore leaves unaffected the law developed under section 8(b)(4). The Denver Building Trades (341 U. S. 675) and the Moore Drydock (92 N.L.R.B. 547) cases would remain in force.

Agreements by which a contractor in the construction industry promises not to subcontract work on a construction site to a nonunion contractor appear to be legal today. They will not be unlawful under section 8(e). The proviso is also applicable to all other agreements involving undertakings not to do work on a construction project site with other contractors or subcontractors regardless of the

precise relation between them. Since the proviso does not relate to section 8(b)(4), strikes and picketing to enforce the contracts excepted by the proviso will continue to be illegal under section 8(b)(4) whenever the Sand Door case (357 U. S. 93) is applicable.

It is not intended to change the law with respect to the judicial enforcement of these contracts, or with respect to the legality of a strike to obtain such a contract.

It should be particularly noted that the proviso relates only to the "contracting or subcontracting of work to be done at the site of the construction." The proviso does not cover boycotts of goods manufactured in an industrial plant for installation at the jobsite, or suppliers who do not work at the jobsite.

Page 1715: Representative Barden, 9-4-59

The first proviso under subsection (e) of section 704 permits the making of voluntary agreements between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done directly on the site of construction.

This proviso is intended to permit what is now lawful and deals only with situations where there is a contractor or subcontractor relationship and not to situations where there is no privity of contract between two or more contractors on a particular site. Such as in the case of co-contractors, each having direct contracts with the owner.

Pages 1829-1830: Senator Goldwater, 9-24-59.

Q. Isn't there an exception to the construction industry, too?

A. The exception to the construction industry is only a partial one. They don't get what the garment industry gets. They are left in status quo. They can't engage in secondary boycotts as far as the construction industry is concerned. Those are outlawed completely.

But a building trades union may enter into a contract with a contractor—building contractor—whereby he agrees

that he will not let work to any subcontractor who is non-union. This is not illegal.

Page 1858: Senator Goldwater, 9-14-59.

It is the intention of Congress that the new legislation leave it in the same unresolved status under the building construction industry exemption and that the Board and the courts decide the issue for the building construction industry as if these new amendments contained in section 8(e) had not been enacted and in accordance with the previously applicable law. In other words, it is the congressional intent that section 8(b)(4), as amended, banning secondary boycotts, apply without qualification in the building construction industry and that the principles enunciated in the Sand Door case (Local 1796, United Brotherhood of Carpenters v. NLRB, 357 U. S. 93), the Denver Building Trades case (NLRB v. Denver Building and Construction Trades Council, et al., 341 U. S. 675), and the Moore Drydock case (Moore Drydock Co., 81 NLRB 1108), remain fully applicable.

Page 1861: Representative Kearns, 9-14-59.

The Senate bill merely outlawed hot cargo agreements with common carriers. The House amendment interdicted agreements not to do business with another entered into by any employer. At the time of the consideration of this amendment there had been some discussion of a proposal to permit unions to picket a construction site if they had disputes with any contractor on the job. It was partly in this frame of reference that the proviso to section 8(e) was written which provides—

That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of construction.

As in the common-situs picketing problem, it was the location of the work that we had in mind and, as a reason-

able compromise, we provided that the agreement must relate to work actually done at the site. Work done or products manufactured, processed, fabricated, and so forth by another employer away from the construction site could not be subject to a hot cargo agreement. It was not intended to restrict an employer's freedom to do business or purchase from any other person and to decide in what form the product or materials shall arrive on the job. Furthermore, to interpret the proviso to cover any work or product which could be done at the site would permit restrictions on the installation of many other products besides prefabricated pipe which arrive on the job in prefabricated form. This certainly was not in my mind.

The conference report supports my view. It states, at page 39, that the proviso in question relates only and exclusively to the contracting or subcontracting of work to be done at the site of construction and that it does not exempt from section 8(e) agreements relating to supplies or other products or materials shipped to the site of construction. The legislative history in the Senate is also in accord with my view. On September 3, 1959, Senator Kennedy, in reporting the conference agreement to the Senate, said at page 16415 of the Record:

> "It should be particularly noted that the proviso relates only to the 'contracting or subcontracting of work to be done at the site of the construction.' The proviso does not cover boycotts of goods manufactured in an industrial plant for installation at the jobsite, or suppliers who do not work at the jobsite."

Senator Morse also said, on the same day, at page 16399 of the Record, in referring to the hot cargo amendment:

> "First. It would prevent a union from protecting the bargaining unit it represents by obtaining an agreement not to subcontract work normally performed by employees in the unit."

Excerpts from Legislative History, Etc.

The Senate Committee on Labor and Public Welfare printed a section by section analysis of the act, published September 10, 1959, and stated with respect to the section in question that the prohibition against hot cargo agreements does not apply to the construction industry relating to work to be done at the construction site.

It seems clear to me, therefore, that an employer, even in the construction industry, retains the freedom to choose how the products or materials he utilizes shall arrive on the job—prefabricated or not—and that such freedom cannot be restricted by agreements with labor organizations.

EXCERPTS FROM BOARD ORDERS.

Pertinent parts of Board orders in leading secondary boycott cases in the construction field:

1. *Joliet Contractors Association*, 99 NLRB 1391, 1397-8 (1952).

Respondents shall:

"1. Cease and desist from applying its bylaws in such a manner as to induce and encourage the members of Local No. 27, or otherwise inducing or encouraging the members of Local No. 27, to engage in a strike or a concerted refusal in the course of their employment to perform services for Joliet Paint and Glass Co., *or any other employer*, where an object thereof is to require their employer *or any other employer or other person* to cease doing business with *any other employer* or any person who uses or sells *preglazed sash*, or has used or sold *preglazed sash*." (Emphasis added.)

2. *General Millwork*, 113 NLRB 1084, 1087 (1955).

Respondents shall:

"1. Cease and desist from inducing or encouraging the employees of Wilford Decker and Calvey-Gunderman, *or any other employer*, to engage in a concerted refusal in the course of their employ-

ment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services for their employer, where an object thereof is to force or require Wilford Decker, Calvey-Gunderman, Erie Building Company, and Scholz Homes, Inc., *or any other employers or persons,* to cease using, handling, or otherwise dealing in the products of, or to cease doing business with, General Millwork Corporation, Haskelite Manufacturing Corporation, *or any other manufacturer or producer of prehung or nonunion doors.*" (Emphasis added.)

3. *Sand Door & Plywood,* 113 NLRB 1210, 1218 (1955).

Respondents shall:

"1. Cease and desist from inducing or encouraging the employees of Havstad & Jensen, or *any other employer* to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services for their employer, where an object thereof is to force or require Havstad & Jensen or *any other employer* or person to cease using, handling, or otherwise dealing in the products of Paine Lumber Company or *any other nonunion manufacturer,* or to force or require Sand Door and Plywood Co., or *any other employer or person,* to cease doing business with Paine Lumber Company or *any other nonunion manufacturer.*" (Emphasis added.)

4. *Anderson Corporation* (Case No. 13-CC-157), January 30, 1958.

Respondents shall:

"1. Cease and desist from engaging in, or from applying the Working Rules of the Respondent, Chicago

District Council of Carpenters, Mill and Factory Workers of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, in such a manner as to induce or encourage their members, or by any other means induce or encourage the employees of Donald G. Beyer *or the employees of any other employer* to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services for Donald G. Beyer, *or any other employer*, where an object thereof is to force or require Donald G. Beyer, Edward Hines Lumber Company, Associated Door and Plywood Company, *or any other employer* or other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or doing business with, Anderson Corporation *or any other producer, processor* or manufacturer whose products do not bear the label of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO." (Emphasis added.)

5. *Cardinal Industries*, 144 NLRB 91 (1963).

Respondents shall:

"1. Cease and desist from:

(a) Inducing or encouraging any individual employed by Hankins, *or by any other person* engaged in commerce or in an industry affecting commerce, to refuse to install prefabricated materials manufactured by Cardinal *or by any other person.*

(b) Threatening, restraining, or coercing Hankins, *or any other person* engaged in commerce or in an industry affecting commerce,

where an object thereof is to force or require Hankins or such other persons *not to purchase or install prefabricated materials manufactured by Cardinal* or by any other person." (Emphasis added.)

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 14904

NATIONAL WOODWORK MANUFACTURERS' ASS'N, et al.,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 14988

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, Respondent.

No. 15064

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

ON PETITIONS TO REVIEW AND PETITION TO ENFORCE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

SUPPLEMENTAL APPENDIX TO BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FOURTH REGION

Case Nos. 4-CE-9 and 4-CC-258

In the matter of:

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

and

CHARLES B. MAHIN, an Individual.

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AND SAID COUNCIL'S OFFICER, ROBERT H. GRAY, SECRETARY-TREASURER, AND REPRESENTATIVES CHARLES L. BOYER, EDWARD KANE, AND EDWARD GOLDSTEIN,

and

CHARLES B. MAHIN, an Individual and NATIONAL WOODWORK MANUFACTURERS ASSOCIATION.

Room 1510, Bankers Securities Building, Philadelphia, Pennsylvania.

Friday, October 18, 1963.

Pursuant to recess, the above-entitled matter came on for further hearing, at 9:30 o'clock a.m.

Before: Louis Libbin, Trial Examiner.

Appearances:

241 ROBERT H. GRAY a witness called by and on behalf of the Respondent, being previously duly sworn, was examined and testified further as follows:

Trial Examiner. Mr. Gray, you testified before and I want you to understand you are still under oath.

Mr. Gray. Yes, sir.

Direct examination.

261 By Mr. Goldstein:

Q. Now, you have heard the testimony here, Mr. Gray. May I preface this question by saying I do not waive the objection that the witness did not identify a single one of the contractors who had these jobs as having testimony was perfectly worthless here.

Now, did you know of any pre-cut and pre-fit doors coming into the five-county area of Pennsylvania that constitutes your District Council's jurisdiction, which were installed by your members, your District Council members?

A. No, I did not.

Q. Did you know of the, I think, some 700 doors
262 that were allegedly pre-cut and pre-fit and were allegedly installed at the Temple University Laboratory within the last year?

A. No, I did not know.

Trial Examiner. You are denying it was done; you are merely saying you didn't know about it?

The Witness. I didn't know about it.

Mr. Mahin. I object.

Trial Examiner. I sustain the objection.

By Mr. Goldstein:

Q. Was it possible that some pre-cut and pre-fit millwork could come into the five-county area and would be installed without your knowledge?

A. Can I answer this without a yes or no?

Trial Examiner. Can you answer yes or no, and then explain?

The Witness. I can answer it yes or no and then explain, yes.

Yes, it is possible.

By Mr. Goldstein:

Q. Go ahead and tell us.

A. Mr. Trial Examiner, we have about 500 contractors in contractual relationship with the union who have signed the collective bargaining agreement with us. I am very unhappy to say at this time or any other time that at least 200 of them are chiselers and they will come into this district and they will do anything to violate that contract if it saves them a buck and that is how it could have been done.

263 Mr. Hannon. Objection. I move that that be stricken.

Trial Examiner. It is stricken.

By Mr. Goldstein:

Q. On the job that 30 or 23 or 20 doors are to be installed, wouldn't your 15 business agents in this area get to know about them, and report them to you?

Mr. Hannon. Objection.

Trial Examiner. Well, can you explain how it happened that none of your business agents reported that incident to you?

The Witness. I can answer that. There are some jobs that could be completed before a business agent even got to the job or before it was brought to his attention.

But if it had been brought to his attention, he certainly would have brought it to my attention. There would have been proper action taken.

Mr. Hannon. I object.

Trial Examiner. All right, proceed.

By Mr. Goldstein:

Q. You have 500 contractors that have a contractual relation with your District Council. I assume the great majority of them have jobs the great majority of the time?

A. I assume they do.

Q. And you have only 15 business agents to go over those jobs, isn't that right?

A. Actually, I only have 10 business agents to go
264 over those jobs because the other business agents that I mentioned yesterda, are specialty business agents that take care of the specialty work.

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 14904

NATIONAL WOODWORK MANUFACTURERS' ASS'N, et al.,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 14988

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, Respondent.

No. 15064

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

ON PETITIONS TO REVIEW AND PETITION TO ENFORCE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

SUPPLEMENTAL APPENDIX TO BRIEF FOR RESPONDENTS, ROBERT H. GRAY, CHARLES L. BOYER AND METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

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9 Mr. Hannon: As far as the secondary aspects are concerned, we feel in this case the primaries would be the door producers themselves, and that the secondaries in this situation would be the contractors at the four job sites.

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PHILLIP J. DIAMOND

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Cross examination.

By Mr. Goldstein:

41 Q. I assume that as project manager you enforced observance of the specifications by the contractor, didn't you?

A. Yes, I did.

Q. And that the only way there could have been a departure from the specifications, or a change in the specifications, was if the bidding contractor and the architect and the owner agreed to it; is that right?

A. If the architect and owner agreed to it.

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42 Q. Were there discussions between the architects and representatives of L. F. Driscoll Company before the contract was let?

A. Yes.

Q. Among other matters discussed were the specifications?

A. Not in particular, no.

Q. I didn't ask you whether in particular or not. Didn't the contractor want to know what does this mean, what does that mean?

A. Not at that time. He asked questions when the bidding period opened.

Q. During the bidding period?
A. I think so.

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WALTON H. NASON, JR.

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Cross examination.

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By Mr. Goldstein:

75 Q. I see. During the pre-bidding period, before you were awarded the contract, which is General Counsel Exhibit No. 5, did representatives of the company, to your knowledge, have any discussions with the architects or with the owner concerning the specifications?
A. Probably, although it would be hearsay if I said that.

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76 A. I would say all of the jobs that we bid have questions which are presented to the architects for either clarification or change before the job is submitted as a bid.
Q. In connection with this particular job represented by General Counsel Exhibit 5, were there such discussions to your knowledge?
A. Not to my knowledge, but I am sure there were.
Q. No, I mean knowledge of the discussion, not because you participated in the discussion with the architect, but because the executives of your firm, among themselves discussed the problems that they wanted to take up with the architect?
A. We often do.
Q. And in this case, did you?
A. I don't recall specifically, sir.
Q. But the normal procedure exists?
A. Yes.
Q. And normally, on jobs that your company intends to bid on, changes in the specifications are made by reason of suggestions proposed by your company's representatives?

Mr. Hannon: Objection. If he knows.

Trial Examiner: All questions are if you know.

The Witness: Presupposedly, I know. There are times when the architects, because of expedition or cost or
77 other reasons of which I am not always familiar, will change the specifications.

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79 Q. Did the District Council or any of its representatives tell you that it had any quarrel with Oxford Plastic Products?

A. No, sir.

Q. Did anybody ever tell you that the Metropolitan District Council had any quarrel or disputes or difference with Oxford?

A. No, sir.

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DANIEL C. MCDONNELL

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Cross examination.

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By Mr. Goldstein:

102-103 Q. Now, has your company ever made representations to the owner, to the Contractor in the prebidding, that certain of the specifications seemed to you impracticable or would put you in a difficult position for bidding, but that you could bid better if those provisions of the specifications were altered and amended?

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The Witness: Yes, from time to time if there has been a question we have discussed with the architect.

By Mr. Goldstein:

Q. And I assume that you have had on occasion, some success in having your suggestions adopted?

A. I don't recall that we have had any success, but I do know that we have made representations to the architect.

Q. Hoping that they would be successful?

A. Yes.

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107 Q. Do you know from whom he did obtain these doors?

A. He obtained them from a door company in Wisconsin whose name slips me for the moment.

Q. Let me see if I can help you out on that. Is it the Hardwood Products Corporation?

A. Hardwood Products Corporation, yes.

Q. When you spoke to Mr. Gray or Mr. Boyer, did either of them tell you that the Hardwood Products Corporation and the District Council had some quarrel or dispute?

Was the name even mentioned?

A. In this connection?

Q. Was the name Hardwood Products Corporation mentioned in your discussion with either Mr. Boyer or Mr. Gray?

A. No, it was not.

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EDWARD C. DRISCOLL

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Cross examination.

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By Mr. Goldstein:

150 Q. During your conversation with Mr. Gray, was the name of Boyertown Planing Mills mentioned?

151 A. I don't think so.

Q. During your conversations with Mr. Gray, was the name of the Hardwood Products Corporation mentioned?

A. I may have mentioned it, but I don't recall.

Q. Did Mr. Gray tell you that the District Council had any dispute or difference with Hardwood Products Corporation or that it objected to your buying doors from that company?

A. No, sir.

Q. Or that it objected to your buying doors from Boyertown Planing Mills?

A. No, sir.

Mr. Hannon: I would object to that last question referring to a dispute.

Trial Examiner: I will overrule that objection.

By Mr. Goldstein:

Q. Have you ever done business before with the Hardwood Products Corporation?

A. Not directly.

Q. Through a subcontractor?

A. I am sure we have. I can't think of when.

Q. Could you recall whether or not the Hardwood Products Corporation has ever furnished you with blind or blank doors, as they are referred to in the trade?

A. Probably, in the distant past, yes, sir.

Q. It does make blind doors?

Objection, unless he knows.

152 Trial Examiner: If he knows.

The Witness: Yes, I see their catalogues.

By Mr. Goldstein:

Q. And they show the blind doors?

A. Yes, sir.

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By Mr. Goldstein:

158 Q. Did you at the time prior to the arrival of the doors on the job site notify the union? By you, I mean did your company notify them as to what the specifications said?

A. Not formally. This may have been passed on generally from our superintendent.

Trial Examiner: As far as you know?

The Witness: As far as I know.

Trial Examiner: Had it been done?

The Witness: No, sir.

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ROBERT H. GRAY

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Direct examination.

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By Mr. Goldstein:

258 Q. Mr. Gray, did your District Council, to your knowledge, your Brotherhood, have any dispute or difference with or did either of them make any attempt to organize during the period here in question, the Oxford Plastics Products Corporation?

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The Witness: The answer is no.

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By Mr. Goldstein:

Q. I ask you the same question with respect to the Yohn Company.

259 A. Did we try to organize them?

Q. Or did you have any dispute or difference with them?

A. No.

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By Mr. Goldstein:

Q. How about T. W. Hammonds?

A. No.

Q. Mohawk Flush Doors?

A. No.

Q. Baldwin Lumber Company?

A. No.

Q. Boyertown Planing Mill?

A. No.

Q. Any other firm other than the four contractors here involved that has been mentioned during the time that you have been in this room?

A. What do you mean?

Q. Did your International or did your Council have any dispute or quarrel or try to organize the employees of any other firm that may have been mentioned here other than the four contractors?

A. No.

Q. Did you ever have any oral communications with any of the representatives of any of these firms that I have
260 mentioned?

A. No, I did not.

Q. Did you ever have written communication either from you to them or from them to you?

A. No, I did not.

Q. Did you, or was it your purpose or the purpose of your District Council—were you acting as its business manager when you instructed your job-site carpenters not to hang or install these pre-cut, pre-fit doors, to have either Driscoll or McDonnell or Frouge or Nason & Cullen, stop doing business either with the suppliers who furnished the doors or with the mills that produced the doors?

Mr. Hannon: Objection.

Trial Examiner: Overruled.

The Witness: The answer is no, Mr. Goldstein, as I have already indicated in my previous testimony.

I said before that I didn't care where they came from.

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Testimony

By Mr. Hannon:

276 Q. Possibly, to refresh your recollection, as early as February of this year, advising the general president, Mr. Hutchinson of the United Brotherhood of Carpenters, that we have a problem and it has become very serious in the Philadelphia area and drawing his attention to it—

A. (Mr. Robert H. Gray) I am glad you brought that to my attention. I did write a letter to our general president. I think the letter was written in February of 1963. I am not sure exactly. It was calling to their attention that there were pre-cut or pre-fit doors coming into area. I thought it was a very serious problem as far as our people, our outside carpenters, losing work and I didn't want it to happen. I cannot quote the letter verbatim.

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[fol. 156]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Nos. 14904, 14988, 15064

September Term, 1965—September Session, 1965

No. 14904

NATIONAL WOODWORK MANUFACTURERS ASS'N., et al.,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 14988

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, Respondent.

No. 15064

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

On Petitions to Review, and Petition to Enforce, an Order of the National Labor Relations Board.

OPINION—November 17, 1965

Before Hastings, Chief Judge, and Schnackenberg and Knoch, Circuit Judges.

[fol. 157] Schnackenberg, Circuit Judge. Petitioner, National Woodwork Manufacturers Association, on behalf of its members, Hardwood Products Corporation, a Wisconsin corporation, and Mohawk Flush Doors, Inc., an Indiana corporation, herein called "NWMA", "Hardwood", and "Mohawk", respectively, asks us in No. 14904 to review and modify an order of the National Labor Relations Board, herein called the "Board", issued on November 12, 1964, dismissing, in part, a complaint against Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al., herein called the "Council" or the "Union".

In No. 14988, NWMA and Charles B. Mahin, an individual, made charges upon which the Board issued a complaint on August 27, 1963, and its amended complaint on October 4, 1963, alleging that respondent unions had engaged and were engaging in unfair labor practices in violation of section 8 (b) (4) (A), section 8 (b) (4) (B), and section 8 (e) of the Labor Management Relations Act of 1947, as amended, herein called the "Act", 29 U.S.C.A. § 158. In No. 14988, the Board seeks enforcement of its order entered against the Council and its affiliated local unions.

In No. 15064, the Council, Robert L. Gray and Charles L. Boyer, by their petition, seek an order setting aside the order of the Board to the extent that it finds against them and imposes sanctions on them.

Following a hearing before an examiner and the filing of his decision, the Board issued the aforesaid order of November 12, 1964, which dismissed all charges of violations except those with respect to the Union's conduct on three construction jobs described as (1) the Coatesville Hospital job, at which L. F. Driscoll Company was general contractor; (2) the North Junior High School job, at which John J. McDonnell, Inc., was general contractor; and (3) the St. Aloysius Academy job, at which Nason & Cullen, Inc., was general contractor; as to each of which the Board found violations of section 8 (b) (4) (B) but granted what NWMA considers only partial and inadequate relief.

Twenty-seven local carpenter unions in Philadelphia and in four other counties in Pennsylvania are affiliated with the Metropolitan District Council of Philadelphia and Vicinity. These locals are "serviced" by 11 business agents [fol. 158] who work directly under Gray, the Council's secretary-treasurer and business manager. These business agents police the jobs and see that contracts are adhered to.

The Council engages in collective bargaining with individual employers and with the General Building Contractors' Association, Inc., (GBCA) which bargains on behalf of its employer members who build schools, hospitals, factories, and other structures in the Philadelphia area. The contracts in effect during the relevant period contain a provision similar to rule 17 of the Union's by-laws, which reads as follows:

> Rule 17. No employee shall work on any job on which cabinet work, fixtures, millwork, sash, doors, trim or other detailed millwork is used unless the same is Union-made and bears the Union Label of the United Brotherhood of Carpenters and Joiners of America.[1] *No member of this District Council will handle material coming from a mill where cutting out and fitting has been done for butts, locks, letter plates, or hardware of any description, nor any doors or transoms which have been fitted prior to being furnished on job, including base, chair, rail, picture moulding, which has been previously fitted. This section to exempt partition work furnished in sections.* (Emphasis added.)

It is petitioner's contention in No. 14904 that the Union engaged in an unlawful product boycott of prefabricated doors in the Philadelphia area and enforced an illegal hot-

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[1] The first sentence in Rule 17 concededly violates section 8 (e) but no issue is presented here concerning that aspect of the case.

cargo contract prohibiting the use of such prefabricated doors[2] throughout said area.

[fol. 159] Prefabricated doors are doors which are machined, processed and finished in various ways at the plants where they are manufactured. There was testimony that the use of prefabricated doors saves time and money.

Petitioner cites, as a matter of common knowledge, that the use of prefabricated doors has been greatly increasing in the construction industry, which extends to numerous other parts of building, such as windows, factory-built trusses, wall and partition assemblies, prefinished paneling, prefabricated kitchens and bathrooms, and on up to the point of prefabricated houses and other buildings.

Prior to the present proceedings a letter was written in February, 1963, by Business Manager Gray of the Council to President Hutchinson of the United Brotherhood of Carpenters, stating that there was a serious problem of precut and prefitted doors coming into the Philadelphia area. Then followed a union drive to bar all prefabricated doors, which was implemented by the alleged boycotts and work stoppages that led to the NWMA charges against the Union and these proceedings.

Typical of the operation of the Union drive in this respect was the Coatesville Hospital job in May 1963. Dris-

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[2] (1) Prefitted doors which have been cut to exact size and beveled at the factory, so that they will fit into frame openings on the job without further machining.

(2) Precut doors which have been machined at the factory to receive hardware (locks, knobs, hinges, etc.), louvers, glass openings, and the like.

(3) Prefinished doors which have been preservative-treated, sealed, varnished, painted, or otherwise finished at the factory for ultimate use without further finishing. (Such doors must be completely machined before the final finish is affixed at the factory.)

(4) Armored doors which are completely machined at the factory and have plastic or other wear-resistant materials laminated to surfaces and edges.

(5) Prehung doors which are completely machined and assembled in door-frame units at the factory.

coll, the contractor, purchased through a Pennsylvania millwork distributor prefabricated architectural doors made by Hardwood for this job. In accordance with the architect's common practice, the specifications called for precut, prefitted and prefinished doors. On May 23, the day after the doors were delivered to the job, Union agent Boyer called from the job and told vice-president Brown of Driscoll that the prefinished doors could not be hung, because it was "in violation of an agreement". When Brown asked "where do we go from here?", Boyer said that he did not know and that if the doors were hung anyhow, the job would be "struck". Boyer admitted that his word was not final and that Brown could take it up with Gray. Brown then called Gray and stated what had occurred, but Gray said that "no carpenters from now on will hang pre-finished or pre-fit doors." Brown asked what could be done, because the hospital was hoping to get into the building, and Gray said that was not his problem. Thereupon Driscoll's secretary telephoned Gray and asked for an explanation and was told that Driscoll was in violation of rule 17 because the doors had been factory precut, [fol. 160] and that the carpenters were not allowed to hang them. From May 23, when the Union carpenters discovered the doors on the job, until May 27, they refused to hang them. They were then hung after the contractor agreed to pay the carpenters for work which they did not perform.

Such a solution was not reached in the North Junior High School, St. Aloysius Academy or Frouge Corporation jobs, the first two of which are factually not different from the Coatesville Hospital job.

Frouge Corporation was the general contractor on a housing project in Philadelphia, for which it ordered factory-machined Mohawk doors. Neither job specifications nor Frouge's contract required that the doors be precut, prefitted, or premachined. When the second shipment thereof arrived, Union agents did not allow their men to work on them. They cited rule 17 which was then shown

to and read by President Frouge and Project Manager Green. Frouge had Green order 665 Mohawk doors, which, when delivered, did not bear a union label. Union carpenters did the cutting on the replacement doors which were then installed on the job.

The Board held that the Union violated § 8 (b) (4) (i) (ii) (B), by reason of its boycott of prefabricated doors on the Coatesville, North Junior High and St. Aloysius jobs, but as to Frouge, it held otherwise, giving as its reason, that, while in the first three jobs the specifications called for prefabricated doors and hence the Union target was the doors and persons making and distributing them, in *Frouge* the Union boycotted prefabricated doors which had been purchased by the contractor—but which were *not required* by job specifications. This conclusion seems to indicate that the Board held that the Union's target in *Frouge* was not the prefabricated doors and their manufacturer but rather contractor Frouge and that the situation involved only a primary dispute with him. We agree.

Section 8 (b) (4) (i) (ii) (B) reads as follows:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
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> . . . . . .
>
> (4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in com- [fol. 161] merce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
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> . . . . . .
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing

> in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, ... *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, *any primary strike or primary picketing* [emphasis supplied] . . . .

We hold that Frouge was the object of a "primary strike or primary picketing" and therefore the Union was entitled to the protection of the proviso in §8(b) (4) (B).

We now consider the objections of the Union to the Board's finding of violations of § 8 (b) (4) (B) as to the first three contractors above-named.

The language of the statute and its legislative history clearly indicate that § 8 (b) (4) (B) applies to the product boycott carried on by the Union in this case under its rule 17. In *Allen Bradley Co.* v. *United States,* 325 U.S. 797 (1945), it appeared that Local 3 of the Electrical Workers Union and the Electrical Contractors of New York City had agreed on work rule restrictions, under which Local 3 refused to handle or install electrical fixtures and equipment made or assembled outside the New York City area. It was agreed that, in lieu of absolute prohibition, the union would dismantle and rebuild the "foreign" equipment or be paid the equivalent thereof. Local 3 had no active labor dispute with the "foreign" manufacturers, nor did it have any interest in the working conditions at such factories. It was not concerned with whether the "foreign" fixtures were union made—in fact, it barred fixtures made by its sister local union in New Jersey. Further, Local 3 was not concerned with whether the immediate contractor had or did not have "control of [fol. 162] the work." Clearly, the union's ultimate objective was to preserve work for its members. The intermediate objective, as the means to its ultimate goal, was the boycott of foreign products. It was the inadequacy of antitrust remedies, demonstrated in *Allen Bradley, supra,*

that led directly to the Taft-Hartley prohibition of secondary boycotts.[3]

Our own court in *Joliet Contractors Association* v. *National Labor Relations Board*, 202 F. 2d 606 (1953), cert. den. 346 U.S. 824, considered an area boycott similar to that in *Allen Bradley*. It was a typical product boycott case. There Glazier's Union Local 27 had a rule that preglazed window sashes could not be installed, and the union's bylaws and agreements with the contractor provided that all sash and glass work must be done on each respective job site or building. We rejected the argument there made that the union's dispute with the contractor was only primary and that its objective was preservation of work on the job, saying, at 610:

> "* * * the fact remains that the target was the use of preglazed sash, and any and all who handled, used or sold such sash were the intended and in many cases the actual victims of the Union's course. Moreover, we are not convinced that a Union violation of the provision under discussion is dependent upon whether its activities are primary or secondary. * * *"

In the case at bar the Union's target was and is prefabricated doors. Neither here nor in *Joliet Contractors* was there a labor dispute between the union and any manufacturer.[4] In *Joliet Contractors* we found the union's refusal to install such products to be a violation of § 8 (b) (4) (A).[5] At that time the proviso in § 8 (b) (4) (B) had not been enacted.

We find nothing to the contrary in *Local 761, International Union of Electrical, Radio & Machine Workers,*

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[3] Legislative History of the Labor Management Relations Act, 1947, pp. 1055-1056, 93 Cong. Rec. 4255.

[4] As in *Allen Bradley*, in the case at bar the Union was not concerned with whether the boycotted doors were union made.

[5] Now known as (B).

AFL-CIO v. National Labor Relations Board, et al., 366 U.S. 667 (1961), relied on in the brief of the Union.

[fol. 163] Our views find support in *National Labor Relations Board v. Local 11, United Brotherhood of Carpenters, etc.*, 6 Cir., 242 F. 2d 932 (1957) which involved § 8 (b) (4) (A)* of the Act. The Board there contended that the carpenters' union induced a concerted refusal by the employees of the subcontractors to handle prehung doors in a building project in Ohio, which doors had been manufactured in Indiana and Michigan and were sold as component parts of prefabricated home units to the general contractor in the Cleveland, Ohio area.

Judge Stewart (now Justice Stewart) said at 934:

> "Substantially adopting the Trial Examiner's Intermediate Report, a majority of the Board found the respondents had induced and encouraged employees of the subcontractors to engage in a concerted refusal to handle the prehung doors, and that objectives of the respondents' conduct were to force or require the subcontractors to cease using prehung doors, to force or require Erie Building Company to cease using and purchasing prehung doors, and to force or *require Scholz Homes, Inc., to cease doing business with the manufacturers of the doors.* (Italics supplied.)
>
> • • • • • • •
>
> "The fact that there was not an active labor dispute between the respondents and the producers of the doors would not serve to immunize the respondents from the terms of § 8 (b) (4) (A) of the Act, which neither literally nor implicitly requires the existence of such a dispute as a condition of its operation. N. R. L. B. [sic] v. Washington-Oregon Shingle Weavers' Dist. Council, 9 Cir., 1954, 211 F. 2d 149, 152-153.
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> • • • • • • •

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* Now known as (B).

"This brings us to the respondents' primary defense. They say that, even if they encouraged and induced a concerted work stoppage by employees with respect to the doors, this did not constitute an unfair labor practice within the meaning of § 8 (b) (4) (A) because the immediate employers (the subcontractors) had acquiesced in advance in the em- [fol. 164] ployees' action by virtue of a collective bargaining agreement containing a 'hot cargo' clause, and also by reason of the fact that the subcontractors themslves [sic] belonged to the union, and as union members were obligated not to use the prehung doors. Although the Board found upon conflicting evidence that no collective bargaining agreement containing a 'hot cargo' clause was then in effect, it is conceded that the subcontractors were members of the union and that they acquiesced in the conduct of their employees in not handling or working on the doors in question."

By an amendment enacted in 1959, subsection (e) was added to § 8 of the Act, 29 U.S.C.A. § 158, providing, in part:

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: *Provided,* That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, paint-

ing, or repair of a building, structure, or other work: * * *.

The distinction between job site work and factory-made products is recognized in the foregoing construction proviso of § 8 (e) itself. The legislative history shows that it was explained by Senator Kennedy that the "proviso does not cover boycotts of goods manufactured in an industrial plant for installation at the jobsite."[1]

We hold that § 8 (e) unaffected by the proviso is controlling in this case.

[fol. 165] For all of these reasons, that part of the Board's order entered November 12, 1964 dismissing, in part, the complaint against the Council is set aside and this cause is remanded to the Board with instructions to enter an order finding that the Council violated § 8 (b) (4) (i) (ii) (A) and § 8 (e) of the Act, as set forth herein, as well as § 8 (b) (4) (i) (ii) (B) to the extent found by the Board, which action we affirm.

The Board is directed to restrain any further such proscribed violations of the Act by the Council in the Philadelphia area.

In Part Affirmed and In Part Set Aside and Remanded With Directions.

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[1] J.A. 135; II Leg. Hist., p. 1443.

[fol. 166]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 14,904

NATIONAL WOODWORK MANUFACTURERS ASSOCIATION, a non-profit corporation for itself and on behalf of its members,

and

HARWOOD PRODUCTS CORPORATION, a Wisconsin corporation, and MOHAWK FLUSH DOORS, INC., an Indiana corporation, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 14,988

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, and its affiliated Local Unions, and ROBERT H. GRAY and CHARLES L. BOYER, Respondents.

No. 15,064

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, and ROBERT H. GRAY and CHARLES L. BOYER, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

DECREE—February 23, 1966

[fol. 167] Before: Hastings, Chief Judge, and Schnackenberg and Knoch, Circuit Judges.

The above consolidated cases came on to be heard upon petitions to review and a petition to enforce an Order of the National Labor Relations Board, dated November 12, 1964. The Court heard argument of respective counsel on October 18, 1965, and has considered the briefs and transcript of record filed in these proceedings. On November 17, 1965, the Court, being fully advised in the premises, handed down its opinion granting enforcement of the Board's said order respecting certain violations of 8(b)(4)(i)(ii)(B) and remanding to the Board with instructions to enter an order finding that Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO and its affiliated Local Unions, and Robert H. Gray and Charles L. Boyer (herein referred to as the Council) violated 8(b)(4)(i)(ii)(A) and 8(e) of the Act as set forth in the opinion, and restraining any further such proscribed violations of the Act by the Council in the Philadelphia area. In conformity with the Board's original order aforesaid, which is the only order presently before the Court, and pending the Board's entry of its new order embodying the additional violations found by this Court, it is hereby

[File endorsement omitted]

Ordered, Adjudged and Decreed that:

1. Respondents, Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and its Affiliated Local Unions, their officers, representatives, agents, successors, and assigns, shall:

A. Cease and desist from entering into and maintaining any agreement containing the "Union Label" sentence of Working Rule 17, or any like or related provision.

B. Take the following affirmative action which has been found necessary to effectuate the policies of the National Labor Relations Act (hereinafter called the Act).

[fol. 168] (1) Post in conspicuous places in Respondents business offices, meeting halls, and all places where notices to members are customarily posted, copies of the notice attached hereto and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania) shall, after being duly signed by Respondents' authorized representatives be posted by Respondents immediately upon receipt thereof and be maintained by them for 60 consecutive days. Reasonable steps shall be taken by Respondents to insure that such notices are not altered, defaced, or covered by any other material.

(2) Furnish to the said Regional Director signed copies of the aforementioned notice for posting by L. F. Driscoll Company, Frouge Corporation, and by any employers in the Philadelphia, Pennsylvania, area who are members of the General Building Contractors Association which has a collective-bargaining agreement with Respondents, if said Employers agree, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director shall, after being signed by Respondents as indicated, be forthwith returned to the Regional Director for disposition by him.

(3) Notify the said Regional Director in writing, within 10 days from the date of this Decree, what steps the Respondents have taken to comply herewith.

2. Respondent Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, representatives, successors, assigns and agents, including Robert H. Gray and Charles L. Boyer, shall:

A. Cease and desist from inducing or encouraging any individual employed by Nason and Cullen, Inc., John J. McDonnell, Inc., L. F. Driscoll Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, ma- [fol. 169] terials, or commodities, or to perform any services, and cease and desist from threatening, coercing, or restraining any of the aforenamed employers or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require any of the aforementioned employers or persons to cease doing business with mill suppliers, including T. W. Hammond & Bros., John A. Yohn Co., and Boyertown Planing Mill Co., or to force or require said mill suppliers to cease doing business with door manufacturers, including Oxford Plastics Co., and Hardwood Products Corporation.

B. Take the following affirmative action which has been found necessary to effectuate the policies of the Act:

(1) Post in conspicuous places in Respondents' business offices, meeting halls, and all places where notices to members are customarily posted, copies of the notice attached hereto and marked "Appendix B." Copies of said notice to be furnished by the aforesaid Regional Director, shall, after being duly signed by the representatives of Respondents

and by the individual Respondents herein, be posted by said Respondents, as aforesaid, immediately upon receipt thereof and maintained by them for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(2) Furnish to the said Regional Director signed copies of the aforementioned notice for posting by each of the employers and persons mentioned in paragraph 1 B, (2) *supra*, who are willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed by Respondents, as indicated, be forthwith returned to the Regional Director for disposition by him.

(3) Notify said Regional Director in writing, within 10 days from the date of this Decree, what steps Respondents have taken to comply herewith.

[fol. 170] It Is Further Ordered, Adjudged and Decreed that this cause be, and hereby is, remanded to the Board with instructions to enter an order finding that the Council violated Section 8(b)(4)(i)(ii)(A) and Section 8(e) of the Act, as set forth in the opinion of this Court. Upon presentation, an appropriate decree will be entered as to the violations of Section 8(b)(4)(i)(ii)(A) and 8(e).

Elmer J. Schnackenberg, Judge, United States Court of Appeals for the Seventh Circuit.

John S. Hastings, Judge, United States Court of Appeals for the Seventh Circuit.

Win G. Knoch, Judge, United States Court of Appeals for the Seventh Circuit.

[fol. 171]

APPENDIX A TO DECREE

NOTICE

PURSUANT TO

A Decree of the United States Court of Appeals Enforcing an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT enter into or maintain any agreement containing the "Union Label" sentence of Working Rule 17, or any like or related provision.

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

.....

(Labor Organization)

Dated ..... By .....

(Representative) (Title)

THE AFFILIATED LOCAL UNIONS

.....

(Labor Organization)

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut and Juniper Streets, Philadelphia, Pennsylvania 19107 (Tel. No. 735-2612), if they have any question concerning this notice or compliance with its provisions.

[fol. 172]

APPENDIX B TO DECREE

NOTICE
PURSUANT TO

A Decree of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by NASON AND CULLEN, INC., JOHN J. MCDONNELL, INC., L. F. DRISCOLL COMPANY, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to handle, work on, or perform any services on, precut or prefit, millwork, including precut or prefit doors, and WE WILL NOT threaten, coerce or restrain any of the aforenamed employers or any other person engaged in commerce or in an industry affecting commerce, where in either case, as object is to force or require any of the aforementioned employers or persons to cease doing business with mill suppliers, including T. W. HAMMOND & BRO., JOHN A. YOHN, Co., and BOYERTOWN PLANING MILL Co., or to force or require said mill suppliers to cease doing business with door manufacturers, including OXFORD PLASTICS Co. and HARDWOOD PRODUCTS CORPORATION.

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

(Labor Organization)

Dated ..... By .....
(Representative) (Title)

Dated ..... By .....
Robert H. Gray,
Secretary-treasurer

Dated ..... By .....
Charles L. Boyer,
Representative

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut and Juniper Streets, Philadelphia, Pennsylvania 19107 (Tel. No. 735-2612), if they have any question concerning this notice or compliance with its provisions.

[fol. 173]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Before Hon. John S. Hastings, Chief Judge; Hon. Elmer J. Schnackenberg, Circuit Judge; Hon. Win G. Knoch, Circuit Judge.

No. 14904

NATIONAL WOODWORK MANUFACTURERS ASSOCIATION, et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

Petition for review of an order of the National Labor Relations Board.

No. 14988

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA, etc., et al., Respondents.

Petition for enforcement of an order of the National Labor Relations Board.

No. 15064

METROPOLITAN DISTRICT COUNCIL OF PHILADELPHIA AND VICINITY, etc., et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

Petition for review of an order of the National Labor Relations Board.

ORDER DENYING PETITIONS FOR REHEARING—
January 24, 1966

It Is Ordered by the Court that the petition for rehearing filed by National Woodwork Manufacturers Association, et al. and the petition for rehearing filed by the National Labor Relations Board be, and the same are hereby Denied.

[fol. 174] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 175]

SUPREME COURT OF THE UNITED STATES

No. 1238, October Term, 1965

NATIONAL WOODWORK MANUFACTURERS ASSOCIATION, et al.,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD.

ORDER ALLOWING CERTIORARI—June 6, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is consolidated with No. 1247 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 176]

SUPREME COURT OF THE UNITED STATES

No. 1247, October Term, 1965

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

NATIONAL WOODWORK MANUFACTURERS ASSOCIATION, et al.

ORDER ALLOWING CERTIORARI—June 6, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is consolidated with No. 1238 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.